

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 GERALD JOHNSON, et al., )  
 )  
 Defendant. )

**CRIMINAL NO.:** JKB-16-0363  
**Jury Trial:** Volume 8

Transcript of Proceedings  
Before the Honorable James K. Bredar  
Tuesday, December 5th, 2017  
Baltimore, Maryland

For the Plaintiff:

Peter J. Martinez, AUSA

Christina A. Hoffman, AUSA

For Defendant Gerald Johnson:

Paul F. Enzinna, Esquire

Jeffrey B. O'Toole, Esquire

For Defendant Kenneth Jones:

Alan R.L. Bussard, Esquire

For Defendant Marquise McCants:

John R. Francomano, III, Esquire

Christine T. Asif, RPR, FCRR  
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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please.

(Pause in the proceedings.)

THE COURT: Mr. Francomano.

MR. FRANCOMANO: Yes, Your Honor. We got a notice from the government, I think on the 29th, in which -- about the testimony of Mr. Gwaltney. And in that testimony it mentions one of my clients, who's in CDF. It mentions his nickname, Butt Butt. I identified that that may be my client, I sent an e-mail to Mr. Martinez. He says it is in fact Mr. Van McNutt and I just heard from Mr. Martinez that they're going to elicit that testimony today.

THE COURT: So it's testimony about him?

MR. FRANCOMANO: Yes, Your Honor.

THE COURT: But you're not going to call him?

MR. FRANCOMANO: Correct, Your Honor. I just wanted the Court to be aware of that.

THE COURT: Let me see Mr. Francomano and Mr. Martinez at the bench.

(Sealed bench conference redacted.)

THE COURT: We're back on the record. You can redistribute the ear pieces.

Mr. Vogan, can I see you?

(Bench conference off the record.)

THE COURT: Are we ready for the jury, Mr. Martinez?

1 MR. MARTINEZ: I believe we are, Your Honor.

2 THE COURT: Mr. O'Toole, Mr. Enzinna.

3 MR. O'TOOLE: Yes.

4 THE COURT: Mr. Bussard.

5 MR. BUSSARD: Yes, Your Honor.

6 THE COURT: Mr. Francomano.

7 MR. FRANCOMANO: Yes, Your Honor.

8 THE COURT: Okay. Who's your next witness?

9 MS. HOFFMAN: Government will call Troy Kellam.

10 THE COURT: In custody?

11 MS. HOFFMAN: He is.

12 THE COURT: Have we called for him?

13 MR. MARTINEZ: I hope so.

14 THE COURT: Why don't you call and make sure he's in  
15 route. Okay, they've got the word.

16 (Jury entered the courtroom.)

17 THE COURT: Good morning, ladies and gentlemen.

18 JURORS: Good morning.

19 THE COURT: We're ready to begin our trial day.

20 Ms. Hoffman, the government may call their next  
21 witness.

22 MS. HOFFMAN: The government calls Troy Kellam.

23 THE COURT: Troy Kellam. And I understand there may  
24 be a moment or two delay while Mr. Kellam is brought into the  
25 courtroom; is that right, Ms. Hoffman?

1 MS. HOFFMAN: I believe that's right.

2 (Pause in the proceedings.)

3 THE COURT: Administer the oath, please.

4 THE CLERK: Mr. Kellam, if you would stand and raise  
5 your right hand to be put under oath please.

6 TROY KELLAM,  
7 called as a witness, being first duly sworn, was examined and  
8 testified as follows:

9 THE WITNESS: Yes.

10 THE CLERK: Thank you, sir, you may have a seat.  
11 And if you would adjust that microphone. And if you would  
12 please speak directly into it, state your first and last name  
13 and spell your first and last name.

14 THE COURT: Turn your chair so you're facing  
15 directly the microphone and then move up --

16 THE WITNESS: Troy Kellam.

17 THE COURT: That's good. Thank you. Your witness,  
18 ma'am.

19 MS. HOFFMAN: I'm sorry. Did you want the witness  
20 to spell his name?

21 THE COURT: Yes. Spell your first name.

22 THE WITNESS: T-r-o-y, K-e-l-l-a-m.

23 THE COURT: And spell your last name.

24 THE WITNESS: K-e-l-l-a-m.

25 THE COURT: Thank you. Your witness, ma'am.

DIRECT EXAMINATION

BY MS. HOFFMAN:

Q Good morning, Mr. Kellam.

A Good morning.

Q How old are you?

A 32.

Q Where are you from originally?

A Baltimore, Maryland.

Q Whereabouts in Baltimore?

A West.

Q West Baltimore?

A Yes.

Q Have you lived in Baltimore most of your life?

A All of my life.

Q Are you currently in the custody of the U.S. Marshals awaiting sentencing in a criminal case?

A Yes.

Q What were you charged with in that case?

A Murder and racketeering.

Q And was that charge based on your involvement in the Black Guerilla Family gang or BGF?

A Yes.

Q Did you plead guilty in that case?

A Yes.

Q Did you also plead guilty to murdering an individual

1 named George Nealy in furtherance of BGF?

2 A Yes.

3 Q Is Mr. Nealy also known as G-Bae?

4 A Yes.

5 Q When you pled guilty, did you enter into a plea agreement  
6 with the government?

7 A Yes.

8 Q And as part of that plea agreement, did you also agree to  
9 cooperate with law enforcement?

10 A Yes.

11 Q Does part of your agreement with the government require  
12 you to testify truthfully as a witness in this case?

13 A Yes.

14 Q What are you hoping to get out of testifying today?

15 A A clear conscience.

16 Q Can you repeat that?

17 A A clear conscience.

18 Q Are you also hoping to get some sentencing leniency?

19 A Yes.

20 Q Does your eligibility for a sentencing reduction depend  
21 in any way on whether the defendants in this case are  
22 convicted or acquitted?

23 A No.

24 Q Under your plea agreement, what would happen if the  
25 government found out that you testified untruthfully?

1 A I would get nothing.

2 Q Under your plea agreement, what would happen if the  
3 government found out that you exaggerated?

4 A I would get nothing.

5 Q Has anyone made you any guarantees about what your  
6 sentence will be in this case?

7 A No.

8 Q Who is ultimately responsible for determining your  
9 sentence?

10 A The judge.

11 Q When you pled guilty in this case, Mr. Kellam, was that  
12 your first criminal conviction?

13 A No.

14 Q Okay. I want to start at the beginning, were you  
15 convicted of possession with intent to distribute heroin in  
16 2007?

17 A Yes.

18 Q Were you also convicted of possession with intent to  
19 distribute narcotics in 2008?

20 A Yes.

21 Q And in 2014, were you convicted of attempting to  
22 distribute narcotics?

23 A Yes.

24 Q And then in January 2015, were you arrested by the  
25 Baltimore Police Department for the murder of George Nealy,

1 also known as G-Bae?

2 A Yes.

3 Q Is that the murder you said you pled guilty to as part of  
4 your federal case?

5 A Yes.

6 Q When you were first arrested for that murder, did you  
7 participate in an interview with a BPD homicide detective?

8 A Yes.

9 Q Was that interview recorded?

10 A Yes.

11 Q Did you tell the truth during that interview?

12 A No.

13 Q Why were you not truthful during that interview?

14 A I was shocked I was locked up for it.

15 Q Can you tell me a little bit more about that?

16 A Surprised, didn't expect to get locked up for it, felt  
17 remorseful, felt bad.

18 Q Have you met with law enforcement officers on several  
19 occasions since then?

20 A Yes.

21 Q Have you now told law enforcement officers the truth  
22 about your involvement in that murder?

23 A Yes.

24 Q Can you explain to the ladies and gentlemen of the jury  
25 why you killed Mr. Nealy?



1 A I was ordered to.

2 Q And who ordered you to kill him?

3 A Uncle Mark.

4 Q Who's Uncle Mark?

5 A A bush member.

6 Q And you referred to a bush member, what is a bush  
7 member?

8 A A high ranking BGF member.

9 Q What would have happened to you if you didn't follow  
10 Uncle Mark's order?

11 A I would have became the mission.

12 Q What does it mean to become the mission?

13 A Means if you don't complete the mission you're ordered  
14 to, you become it. Which means if I didn't kill the person, I  
15 was going to be killed regardless, just as well as him.

16 Q Mr. Kellam, are you still in BGF today?

17 A No.

18 Q Why not?

19 A I mean, you grow up, you get mature. BGF never gave me  
20 nothing.

21 Q If and when you get out of prison, are you going to  
22 return to BGF?

23 A No.

24 Q When did you first join BGF?

25 A 2007.

1 Q And where were you at the time?

2 A Baltimore City jail.

3 Q Did you become a full-fledged member of BGF right away?

4 A No.

5 Q What was your status in the gang as of 2007 when you  
6 first joined?

7 A A fox.

8 Q What is a fox?

9 A Someone that's not fully a full-fledged member, he's  
10 going through the training, the observation.

11 Q Did you have a sponsor when you joined?

12 A Yes.

13 Q Who was that?

14 A G-Bae's stepfather.

15 Q And G-Bae is the individual you said whose real name is  
16 George Nealy?

17 A Yes.

18 Q What did you have to do in order to join BGF?

19 A Had to learn the rules, the 33s, 32s, the Silver Fox  
20 Oath, show my heart that I can carry out certain things,  
21 extortions things of that nature.

22 Q What do you mean by extortion?

23 A Pressing up on people.

24 Q And was that in the jail?

25 A Yes.

Q And so what would you press up on them for?

A Drugs, money, whatever was needed.

Q And what would happen if they didn't give you the drugs or money?

A They would get harm done to them.

Q Why did you join BGF?

A It's like a second family, it's a brotherhood.

Q Did you eventually become a full-fledged member of BGF?

A Yes.

Q When was that?

A 2008.

Q And were you still in the Baltimore City jail at the time?

A Yes.

Q Did you to take an oath when you joined?

A Yes.

Q Can you recite the oath for us now or as much of it as you remember?

A Should I be untrue and forsake the chosen few, this oath shall kill me. Shall I become lack in discipline in times of strife and neglect my brothers, this oath shall kill me. If I do harm or allow harm to come to my brothers, this oath kill me. If at any time I refuse or deny my brothers, this oath shall kill me. If I reveal the sworn secrets of this oath, this oath shall kill me.

1 Q And you mentioned earlier that you also had to learn the  
2 rules, which you referred to as the 22s and 33s; is that  
3 right?

4 A Yes.

5 Q Can you give us some examples of the 22s and 33s?

6 A If you're ordered to take care of a mission, you do not  
7 carry it out, you should be killed, become the mission.

8 Q Is there a rule against talking to the police?

9 A Yes.

10 Q Is there a rule requiring the payment of dues?

11 A Yes.

12 Q Are there repercussions if you break the BGF rules?

13 A Yes.

14 Q What are those repercussions called?

15 A Depends which ones you break, but it is all sanctions.

16 Q What types of sanctions are there?

17 A You can get your body beat, you get a universal, get beat  
18 totally or you can get killed, terminated.

19 Q What is a universal?

20 A Beat all over your body.

21 Q So it's a more severe beating?

22 A Yes.

23 Q And who carries out the sanctions?

24 A Other BGF members.

25 Q When you first became a full-fledged member in BGF, what

1 was your rank?

2 A A foot soldier.

3 Q Did there come a time in 2010 when you were released from  
4 the Baltimore City jail?

5 A Yes.

6 Q Where did you go?

7 A Back around my way.

8 Q And where's around the way?

9 A South Baltimore.

10 Q Did you say South Baltimore?

11 A Yes.

12 Q Did you eventually become a member of a BGF regime in  
13 that area?

14 A Yes.

15 Q Which regime was that?

16 A Uncle Mark regime, Uncle Mark MG.

17 Q Where was that regime located?

18 A Pratt and Payson.

19 Q Pratt and Payson?

20 A Yes.

21 Q Approximately when was it that you joined that BGF  
22 regime?

23 A When I fully got into it, it was about 2014.

24 Q Was the Pratt and Payson BGF Regime involved in criminal  
25 activities on the street?

1 A Yes.

2 Q What sort of criminal activities?

3 A Drug dealing, robbery.

4 Q What was your initial rank in the Pratt and Payson BGF  
5 Regime?

6 A Finance.

7 Q And what were your responsibilities as -- what were your  
8 responsibilities in finance?

9 A Collecting dues, making sure payments was paid.

10 Q Did you have any role with respect to the drug dealing in  
11 the neighborhood?

12 A Yes.

13 Q What was that?

14 A I supplied the drugs.

15 Q You mentioned collecting dues, what were members required  
16 to pay in the way of dues?

17 A Whichever was set, sometimes it could be 20, sometimes it  
18 could be 40.

19 Q And what did the dues consist of, how did members make  
20 their money?

21 A By any means necessary, some robbed, some sell drugs.

22 Q Did you eventually climb the ranks in BGF?

23 A Yes.

24 Q What other ranks did you come to hold?

25 A Became the overseer.

1 Q And what is the overseer?

2 A Pretty much he oversees everything that's going on and  
3 reports it back to the bush member.

4 Q Was there ever a point that you were the commander?

5 A Yes.

6 Q And what is the overseer's rank with respect to the  
7 commander?

8 A They mostly, like, they work hand in hand.

9 Q I'm going to show you Government's Exhibit PHI, as in  
10 photos of individuals, 33.

11 A MG.

12 Q Did you say MG?

13 A Yes.

14 Q So you recognize this individual?

15 A Yes.

16 Q And how do you know MG?

17 A Used to come pick up money from me, come pick up drugs to  
18 get high.

19 Q Was he a member of BGF?

20 A Yes.

21 Q Do you know what his rank in BGF was?

22 A Bush member.

23 Q And you said he would come around, pick up money from you  
24 and look to get high is that; right?

25 A Yes.

1 Q How often would he come around?

2 A As much as he felt like it.

3 Q Can you give me a number of times per month, estimated?

4 A Maybe about three, four.

5 Q And were drugs provided to him when he came around?

6 A Yes.

7 Q Did he have to pay for those drugs?

8 A No.

9 Q Why not?

10 A You don't charge a bush member, you just give him what he  
11 want.

12 Q You said he would also come around to get money  
13 sometimes?

14 A Yes.

15 Q Was money given to him?

16 A Yes.

17 Q Did you ever see him personally collect dues from the  
18 gang?

19 A Yes.

20 Q And was that again, because of his rank in the gang?

21 A Yes.

22 Q To your knowledge, Mr. Kellam, were there BGF regimes in  
23 other parts of Baltimore City?

24 A Yes.

25 Q As a ranking member of BGF yourself, did you have



1 interactions with members of other regimes in  
2 Baltimore City?

3 A Yes.

4 Q Was there a regime in the Greenmount Avenue neighborhood  
5 of Baltimore?

6 A Yes.

7 Q And did you become familiar with some of the members of  
8 that Greenmount Avenue Regime?

9 A Yes.

10 Q How so?

11 A Through different ways, the books, I knew a personal  
12 person that introduced me to most of them.

13 Q And who was that friend who introduced you to most of  
14 them?

15 A Mustafa.

16 Q Can you give us some names of some of the members of the  
17 BGF Greenmount Regime who you became familiar with through  
18 Mustafa?

19 A Geezy, Hood, Lil' Norm, Dave, Lil' Dave.

20 Q I'm going to show you Government's Exhibit PHI, as in  
21 photos of individuals, No. 45.

22 A Lil' Dave.

23 Q Did you say that's Lil' Dave?

24 A Yes.

25 Q How did you know him?

1 A We got cool, we was locked up numerous time together.

2 Q I missed the last part of what you said, can you repeat  
3 that?

4 A I said we was cool, we got to know each other personally.  
5 We were locked up a lot of times together.

6 Q You were locked up a lot of times together, did you get  
7 to know him well in jail?

8 A Yes.

9 Q To your knowledge, was Dave involved in -- well, first of  
10 all, let me back up, was Dave a member of BGF?

11 A Yes.

12 Q Was he a member of the Greenmount BGF Regime?

13 A Yes.

14 Q Was Dave involved in acts of violence in the jail?

15 A Yes.

16 Q Can you tell us about that?

17 A He hired -- he had stabbings.

18 Q He participated in stabbings?

19 A Yes.

20 Q How did you know Dave was a member of the  
21 BGF Greenmount Regime, did he talk about it?

22 A Yes.

23 Q Did he ever talk about what he was in jail for?

24 A Yes.

25 Q What did he say he was in jail for?

1 A For a murder.

2 Q Was that the murder of someone named Henry Mills or  
3 Nique?

4 A Yes.

5 MR. BUSSARD: Objection, Your Honor.

6 THE COURT: Don't lead. Sustained.

7 Q (BY MS. HOFFMAN) Do you know whose murder he was charged  
8 with?

9 A Yes.

10 Q Whose murder was he charged with?

11 A Nique.

12 Q Did Dave indicate to you whether or not he was guilty of  
13 that murder?

14 A Yes.

15 Q What did he say?

16 A He said he killed him because it came down the pipeline,  
17 he was ordered to. Little dude didn't see it coming.

18 Q Did he say anything about the evidence against him in  
19 that case?

20 A Yes.

21 Q What did he say?

22 A He hoped it didn't get through evidence, he was pretty  
23 much worried about a tape.

24 Q He said there was a tape he was worried about?

25 A Yeah.

1 Q By tape, do you mean -- what do you mean by tape?

2 A I guess a video.

3 Q Did he say anything about that video?

4 A No, not too much, that it was just they could link things  
5 back.

6 Q Did he say anything about who was in the video?

7 A Yes.

8 Q What did he say about that?

9 A Geezy was in it, big bro.

10 Q Did he refer to Geezy as big bro?

11 A Yes.

12 Q And what did you understand that to mean?

13 A I mean, that's his big man.

14 Q Does that indicate any particular rank to you?

15 A I mean, it's the go-to guy.

16 Q Now, you mentioned he said that Geezy was in this video,  
17 did he say whether he was in the video?

18 A Yes.

19 Q And was he?

20 A I don't know, I never seen the video.

21 Q Did he say that he was in the video?

22 A Yes.

23 Q Did Dave ever indicate to you what his plan was with  
24 respect to the murder charge?

25 A His plan, he pretty much was hoping that he -- well, he

1 was banking on that Geezy got in concert with the little dude  
2 he used to always talk about to take the charge for him.

3 Q So he was hoping that someone else would take the charge  
4 for him?

5 A Yes.

6 Q Did he say who it was?

7 A No. He never said the little kid's name.

8 Q And did he have -- you said he was hoping Geezy would get  
9 this person to take the charge for him?

10 A Yes.

11 Q So did he have conversations with Geezy while he was in  
12 jail?

13 A Yes.

14 MR. O'TOOLE: Objection, Your Honor.

15 THE COURT: Foundation. Sustained.

16 Q (BY MS. HOFFMAN) How did you know that he was trying to  
17 get Geezy to get this guy to take the charge for him?

18 A He kept trying to get in contact with Geezy.

19 Q Did he say anything about whether the guy was going to  
20 take the charge for him?

21 A He said initially little dude was going to take the  
22 charge, but he didn't know what was going on.

23 Q And did he say anything about what his plan was when he  
24 heard the little dude -- when he didn't know what was going  
25 on?

1 A He got frustrated, started getting mad.

2 Q Going to show you Government's Exhibit PHI, as in photos  
3 of individuals, No. 46.

4 A Geezy.

5 Q Is he sitting here in the courtroom today?

6 A Yes.

7 Q Can you point him out for the record?

8 A (Indicating.)

9 Q Can you describe an article of clothing he's wearing?

10 A Gray sweater.

11 THE COURT: Record will reflect that the witness has  
12 identified the Defendant Johnson.

13 Q (BY MS. HOFFMAN) And is this the same Geezy who Dave  
14 talked about in reference to the murder of Nique?

15 A Yes.

16 Q Have you ever interacted with Geezy in jail or on the  
17 streets?

18 A Yes.

19 Q Whereabouts?

20 A Greenmount, Greenmount and 30th.

21 Q Can you tell us about that?

22 A He was pretty much frustrated with some guys up the  
23 street, they was Bloods, I think.

24 Q When you say he, who are you referring to?

25 A Geezy.

1 Q And where were you at the time?

2 A Towards -- going towards the McDonald's, I think it's a  
3 McDonald's right there.

4 Q Going to show you Government's Exhibit No. GM, as in  
5 Google maps, 35. What are we looking at --

6 A McDonald's on the right-hand side.

7 Q I'm sorry, I spoke over you.

8 THE COURT: Wait for the question, sir. Ask the  
9 question, ma'am.

10 Q (BY MS. HOFFMAN) What are we looking at here,  
11 Mr. Kellam?

12 A Greenmount.

13 Q And is this where you were when you had this interaction  
14 with Geezy?

15 A Yes.

16 Q Was there anyone else with you at the time?

17 A Yes.

18 Q Do you remember who that was?

19 A Lil' Dave.

20 Q And what was the nature of your interaction with Dave  
21 that day?

22 A They had a situation over there that Dave caught that the  
23 guy phoned about.

24 Q What was the situation?

25 A They had something that needed to be taken care of.

1 Q Did he tell you anything about that?

2 A They was beefing with the Bloods, so they needed somebody  
3 to come over there and take care of a situation for them.

4 Q Through talking to members of the Greenmount BGF Regime,  
5 did you learn what Geezy's role was in the regime?

6 A No, not specifically.

7 Q Did you learn whether he was a member of the BGF  
8 regime?

9 A Yes.

10 Q I'm going to show you Government's -- well, I should  
11 follow up, was he a member of the BGF Greenmount Regime?

12 A Yes.

13 Q Going to show you Government's Exhibit PHI, as in photos  
14 of individuals, 38. Who are we looking at here?

15 A Lil' Norm.

16 Q Is this Lil' Norm you mentioned earlier as being a member  
17 of the BGF Greenmount Regime?

18 A Yes.

19 Q Did you ever have interactions with him on the street?

20 A Yes.

21 Q Did he ever talk about crimes he committed in furtherance  
22 of the BGF?

23 A Yes.

24 Q Tell us about that, what did he tell you?

25 A He said he put in work, talked about a robbery, talked



1 about a body he had caught.

2 Q He talked about a body he had caught?

3 A Yeah.

4 Q What does it mean to catch a body?

5 A A murder.

6 Q What did he tell you about this murder?

7 A Said that he killed a little dude, but then he told him  
8 that his brother cleaned this mess up.

9 Q I'm sorry, I missed the last part.

10 A He told me he killed a dude but that his brother cleaned  
11 the mess up.

12 Q His brother cleaned the mess up?

13 A Yes.

14 Q Did he tell you anything -- you mentioned robbery as  
15 well, did he tell you anything about a specific robbery?

16 A Yes.

17 Q What did he tell you about that?

18 A He didn't go by himself, another guy went, but they  
19 robbed a dude and came out with a couple pounds of weed and  
20 some guns.

21 Q Did he tell you who he did that robbery with?

22 A I know it was him, Mustafa, I don't know who else was  
23 with him.

24 Q Going to show you Government's Exhibit PHI, as in photos  
25 of individuals, No. 35.

1 I'm sorry, that's the wrong exhibit number. It's CP13.

2 Do you recognize the person on the left here?

3 A Lil' Hood.

4 Q Lil' Hood?

5 A Yes.

6 Q And is this the Hood you mentioned earlier as being a  
7 member of the BGF Greenmount Regime?

8 A Yes.

9 Q Did there come a time when you learned Hood was locked up  
10 for a gun charge?

11 A Yes.

12 Q Did he tell you anything about that charge?

13 A Yes.

14 Q What did he say?

15 A He locked up for a gun. He pretty much was trying to get  
16 out of the situation.

17 Q Is Hood alive today?

18 A No.

19 Q What happened to him?

20 A He got killed.

21 Q Through your conversations with members of the  
22 BGF Greenmount Regime, did you learn anything about why Hood  
23 might have been killed?

24 A Dave thought he might have been telling, that he was  
25 going to tell on him. He was going to fold.

1 Q And how did you know that, who did you hear that from?

2 A Dave.

3 Q Was that while you were locked up together?

4 A Yes.

5 Q Going to show you Government's Exhibit PHI, as in photos  
6 of individuals, 29.

7 A Mustafa.

8 Q And is this the Mustafa you mentioned earlier as being a  
9 member of the BGF Greenmount Regime?

10 A Yes.

11 Q And how did you know him?

12 A Me and Mustafa got a long relationship. He started  
13 hanging out my way.

14 Q Is this the same Mustafa who you said committed the  
15 robbery with Lil' Norm?

16 A Yes.

17 Q Mr. Kellam, are you familiar with the term "little  
18 shooter"?

19 A Yes.

20 Q What does little shooter mean in the context of BGF?

21 A A hitter.

22 Q And what is a hitter?

23 A The go-to guy, the person that take care of things for  
24 you.

25 Q When you say take care of things, can you be more

1 specific, what do you mean by take care of things?

2 A Take hits, you shoot people.

3 Q I'm going to play for you a clip from  
4 Government's Exhibit CD 3, which has already been admitted  
5 into evidence as videos from Gerald Johnson's Instagram  
6 account.

7 (Video played.)

8 Q (BY MS. HOFFMAN) Mr. Kellam, for the record, can you  
9 identify the person speaking in that video?

10 A Geezy.

11 Q Did you hear at the end when he said "free Dave, N-word,  
12 my shooter"?

13 A Yes.

14 Q What does that mean to you?

15 A Classified him as his hit man.

16 Q Going to show you one more picture, which is  
17 Government's Exhibit PHI, as in photos of individuals, 56. Do  
18 you recognize this individual?

19 A Yes.

20 Q Who is it?

21 A Digga.

22 Q When law enforcement officers first showed you this  
23 picture, were you able to identify him immediately?

24 A No.

25 Q What helped you identify him?

1 A I remember the tattoo. I thought it was a mole at first,  
2 but it was a tattoo.

3 Q Have you ever had any personal interactions with Digga?

4 A No.

5 Q How do you know him -- or how do you know who he is?

6 A Because he BGF.

7 MR. FRANCOMANO: Objection, foundation.

8 THE COURT: Sustained. Let's see if we can develop  
9 that before we ask that question.

10 Q (BY MS. HOFFMAN) Based on your conversations with other  
11 members of BGF, do you know whether or not Digga is a member  
12 of BGF?

13 A Yes.

14 Q And can you tell us about that, what those conversations  
15 were or how you learned that?

16 A I learned through a book, seeing him in a book.

17 Q And what book is that?

18 A The regime -- their regime book.

19 Q Can you explain to the ladies and gentlemen of the jury  
20 what the book or the regime book is?

21 A Each regime has a book with all the members in it.

22 Q And so you saw Digga in this book?

23 A Yes.

24 MS. HOFFMAN: Thank you, Mr. Kellam. I have no  
25 further questions.

1 THE COURT: Cross-examination, Mr. Enzinna.

2 MR. ENZINNA: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. ENZINNA:

5 Q Mr. Kellam, I think you testified a few moments ago that  
6 BGF was like a family; is that right?

7 A Yes.

8 Q You said it was like a brotherhood?

9 A Yes.

10 Q In fact, G-Bae, whose name was George Neal (sic) --

11 A Yes.

12 Q -- was like a brother to you, wasn't he?

13 A Yes.

14 Q But you killed him; right?

15 A Yes.

16 Q You shot him at point blank range?

17 A Yes.

18 Q In the head?

19 A Yes.

20 Q How many times?

21 A Can't remember.

22 Q Were you instructed to shoot him at least four times?

23 A Yes.

24 Q Did you shoot him at least four times?

25 A Shot him more than four times.

1 Q His father was a person named Man; is that right?

2 A Yes.

3 Q And Man was a friend of yours?

4 A Yes.

5 Q In fact, Man was your sponsor to get into BGF?

6 A Yes.

7 Q But you killed his son?

8 A Yes.

9 Q And you killed him the day after Father's Day; right?

10 A Yes.

11 Q Now, the reason you killed him was because you'd been  
12 ordered to do so; correct?

13 A Yes.

14 Q By Mr. Bazemore?

15 A Yes.

16 Q And you said that you couldn't refuse that because if you  
17 refused that order, you would become the mission; is that  
18 right?

19 A Yes.

20 Q So if you had not killed Mr. Nealy -- if you had not  
21 killed G-Bae, your life would not have been worth very much,  
22 would it?

23 A Right.

24 Q So you killed him?

25 A Right.

1 Q Despite your relationship?

2 A Yes.

3 Q All right. We will come back to that in a minute. Now,  
4 you -- you no longer belong to BGF; is that right?

5 A No.

6 Q And I think you told -- well, first of all, you were  
7 arrested in January of 2015; correct?

8 A Yes.

9 Q For the murder of G-Bae?

10 A Yes.

11 Q And that's almost three years ago.

12 A Yes.

13 Q And during that three years you've met with government  
14 agents?

15 A Yes.

16 Q Prosecutors?

17 A Yes.

18 Q Police?

19 A Yes.

20 Q And you've told them things; correct?

21 A Yes.

22 Q In fact, you met with them ten days ago; is that right?

23 A Yes.

24 Q And in that conversation, you told them that you weren't  
25 in BGF because it was fun in the beginning but has done



1 nothing for you; is that right?

2 A Yes.

3 Q And you said that BGF had taken you away from your  
4 family?

5 A Yes.

6 Q Is that true?

7 A Yes.

8 Q When did you leave BGF?

9 A Soon as I made my mind up to no longer be a part of it.

10 Q When was that?

11 A When I started cooperating.

12 Q I'm sorry?

13 A When I started cooperating.

14 Q So that would be shortly after January of 2015?

15 A Yes.

16 Q You didn't cooperate at first; correct?

17 A No.

18 Q Yeah, we'll get to that.

19 THE COURT: I'll see counsel.

20 (Bench conference on the record.)

21 THE COURT: Just ask questions, nothing like "we'll  
22 get to that, we'll talk about that later." You're not in -- I  
23 don't want to hear your editorial comments, just ask him  
24 questions. You may step back.

25 (The following proceedings were had in open court.)

1 THE COURT: Next question, Mr. Enzinna.

2 Q (BY MR. ENZINNA) You said earlier that you were no  
3 longer in BGF because you had grown up and become more mature;  
4 is that right?

5 A Yes.

6 Q But in fact, you left because you started cooperating;  
7 correct?

8 A Yes.

9 Q You talked about the -- you called it, I think, the  
10 regime book?

11 A Yes.

12 Q And that was a book that listed the members of the  
13 regime?

14 A Yes.

15 Q Did it include their photographs?

16 A Yes.

17 Q Did it include any other information?

18 A Photograph, address, and phone number.

19 Q Where was -- does each regime have that?

20 A Yes.

21 Q And where is that kept?

22 A Where is it kept?

23 Q Yeah.

24 A I don't know where it's kept right now.

25 Q Okay. But you said that you saw the regime book for the

1 Greenmount Regime?

2 A Yes.

3 Q Where did you see it?

4 A Seen it at Uncle Mark house.

5 Q At?

6 A Uncle Mark's.

7 Q Uncle Mark is Mark Bazemore?

8 A Yes.

9 Q And he was -- who was he?

10 A A bush member.

11 Q Okay. So does each regime give their book to the bush?

12 A I don't know if they each give them to the bush, but they  
13 got to notify them, they got to classify theirselves.

14 Q Why do they keep these books?

15 A You said why?

16 Q Yeah, why?

17 A So you can know all the active members.

18 Q I'm sorry?

19 A So you can know who all the active members are.

20 Q You talked earlier about Michael Gray; right?

21 A Yes.

22 Q And you said he was a bush member?

23 A Yes.

24 Q Did you know a gentleman named Brian Rainey?

25 A Brian Rainey?

1 Q Yeah.

2 A No.

3 Q Did you know a gentleman named Christopher Meadows?

4 A No.

5 Q Would it surprise you if I told you that none of them  
6 mentioned any kind of regime book?

7 A Maybe they didn't.

8 Q All right. You said that you met Gerald Johnson on one  
9 occasion; is that right?

10 A Yes.

11 Q So the information that you've given about him is  
12 information you claim to have received from Mr. Hunter;  
13 correct?

14 A Yes.

15 Q And some of that is information that you interpreted; is  
16 that right?

17 A Yes.

18 Q So for example, you talked about Mr. Hunter calling  
19 Mr. Johnson "big bro," and you interpreted that to mean  
20 something; right?

21 A Yes.

22 Q All right. Now, you said you joined BGF in, I think you  
23 said 2008; is that right?

24 A 2007.

25 Q 2007, and you were in prison at the time?

1 A Yes.

2 Q In fact, at one point you told government agents that BGF  
3 was primarily active in the jail; right, and not so much on  
4 the streets?

5 A Yes.

6 Q And while you were a member of BGF in the prison, you  
7 extorted money and drugs from other prisoners?

8 A Yes.

9 Q I think the language you used was raising money by any  
10 means necessary?

11 A Yes.

12 Q Is that the philosophy?

13 THE COURT: You have to answer.

14 A Yes.

15 Q (BY MR. ENZINNA) All right. Now, you were told -- to  
16 join BGF, someone would have to basically vouch for you?

17 A Yes.

18 Q Someone has to sort of nominate you?

19 A Yes.

20 Q And after you became a member, you were told that you  
21 were nominated because you were sneaky; is that right?

22 A Yes.

23 Q And because you were cunning?

24 A Yes.

25 Q Now let's talk about your arrest in January of 2015. You

1 were arrested for the murder of G-Bae?

2 A Yes.

3 Q Correct? And you said you didn't tell the truth to the  
4 police officer who interviewed you.

5 A Yes.

6 Q You told them that you were the wrong person.

7 A Yes.

8 Q You told them that you weren't there.

9 A Yes.

10 Q You told them you were with your wife.

11 A Yes.

12 Q You told the detective that G-Bae was killed because he  
13 was having an affair with a fellow BGF member; is that  
14 right?

15 A Don't remember saying that.

16 Q Well, you don't remember testifying to that?

17 A No.

18 Q Is there anything that I could show you that would  
19 refresh your recollection?

20 A You could show me. I said anything to take the motive  
21 off of me.

22 Q I'm sorry, can you repeat that?

23 A I said anything to take the motive off me.

24 Q You also told Detective Taylor, who was interviewing  
25 you --

1 A Yes.

2 Q -- that someone named Dottie killed G-Bae; is that  
3 right?

4 A Yes.

5 Q And Dottie was a BGF member?

6 A Yes.

7 Q Part of the brotherhood?

8 A Yes.

9 Q And you weren't very close to Dottie, were you?

10 A Not going to say that.

11 Q Okay. Were you close to him?

12 A Yeah.

13 Q But you still felt like it would be a good idea to blame  
14 him for the murder?

15 A Yes.

16 Q Anything to take the motive off you?

17 A I knew he didn't do it, I knew I did it.

18 Q Okay. But so you thought you would blame him in order to  
19 get the suspicion off yourself?

20 A Yes.

21 Q So you were lying then because you wanted to stay out of  
22 prison; right?

23 A Yes.

24 Q You knew that if you told the truth, you would go to  
25 prison for a long time.

1 A Yes.

2 Q And you didn't want that.

3 A Right.

4 Q So you lied.

5 A Yes.

6 Q But then you changed your strategy; right?

7 A Yes.

8 Q After you consulted with a lawyer?

9 A Yes.

10 Q And you decided to cooperate?

11 A Yes.

12 Q Because you thought that would be better for you.

13 A Yes.

14 Q So you entered into a plea agreement; correct?

15 A Yes.

16 Q Now, you mentioned a number of prior convictions. You --  
17 given your convictions, you are in danger of being found to be  
18 a career offender; correct? Is that correct?

19 A Yes.

20 Q And the -- what sentence -- you said you pled guilty to,  
21 I think it -- I'm not sure how you put it exactly, but  
22 racketeering and murder?

23 A Racketeering and murder.

24 Q At the same time you were charged -- that's a federal  
25 indictment; correct?



1 A Yes.

2 Q You were also charged in state court; right?

3 A Yes.

4 Q With murder?

5 A Yes.

6 Q And you pled -- your plea addressed both of those  
7 charges; right?

8 A Yes.

9 Q Now, what sentence were you facing in the federal case?

10 A The sentence that I pleaded guilty to?

11 Q Yes.

12 A 300 months.

13 Q I'm sorry?

14 A 300 months.

15 Q You weren't facing life imprisonment?

16 A Yes.

17 Q You were. But in fact, the government agreed if you  
18 cooperated to their satisfaction, to recommend 25 years; is  
19 that right?

20 A Yes.

21 Q And part of the deal was that your state sentence,  
22 whatever sentence you got in the state, would be concurrent  
23 with your federal sentence; correct?

24 A Yes.

25 Q So you would be limiting your exposure to what you got in

1 the federal case?

2 A Yes.

3 Q So you would get -- you would serve a sentence for the  
4 racketeering charge; correct?

5 A Yes.

6 Q And nothing after for the state charge for murder?

7 A I don't understand what you're saying, I didn't even know  
8 that.

9 Q Well, the two sentences were going to run concurrent;  
10 correct?

11 A Okay.

12 Q Meaning they would run at the same time?

13 A Okay.

14 Q Is that correct?

15 A Yes.

16 Q So you understood that your sentence was limited to what  
17 you would receive in the federal case; correct?

18 A Yes.

19 Q And you would receive nothing additional to that for the  
20 state murder charge?

21 A Yes.

22 Q Okay. And if the government made the recommendation and  
23 that recommendation was accepted, that would be limited to 25  
24 years; correct?

25 A Yes.

1 MS. HOFFMAN: Objection.

2 THE COURT: Basis.

3 MS. HOFFMAN: Mis -- may I approach?

4 THE COURT: You may.

5 (Bench conference on the record.)

6 THE COURT: All right. What?

7 MS. HOFFMAN: What the plea agreement says is that  
8 the government will not recommend less than 25 years. So it's  
9 not a limit of 25 years.

10 THE COURT: Well, do you have a copy of the plea  
11 agreement?

12 MR. ENZINNA: I do.

13 THE COURT: All right. Do you agree that that's  
14 what it says?

15 MR. ENZINNA: I will check, and if it is, I will fix  
16 that.

17 THE COURT: Thank you.

18 (The following proceedings were had in open court.)

19 THE COURT: Sustained. You may continue.

20 Q (BY MR. ENZINNA) So in your plea agreement, the  
21 government agreed that if you cooperated to their  
22 satisfaction, they would recommend a sentence not less than 25  
23 years; correct?

24 A Yes.

25 Q But it could be 25 years?

1 A Yes.

2 Q And you said you're 32 years old; correct?

3 A Yes.

4 Q So you testified earlier that you were here today because  
5 you were hoping to clear your conscience; is that right?

6 A Yes.

7 Q But you're also hoping for a lighter sentence; right?

8 A Yes.

9 Q Because without the cooperation, you'd go to jail for the  
10 rest of your life; correct?

11 A Yes.

12 Q And with it, you have a chance to be out in 25 years?

13 A Yes.

14 Q And as you said, you would do anything to take the motive  
15 off you?

16 A That was as far as my murder.

17 Q I'm sorry?

18 A That was as far as my murder.

19 Q Okay.

20 MR. ENZINNA: Nothing further, Your Honor.

21 THE COURT: Mr. Bussard.

22 MR. BUSSARD: No questions, Your Honor, thank you.

23 THE COURT: Thank you. Mr. Francomano.

24 MR. FRANCOMANO: Yes, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. FRANCOMANO:

2 Q Mr. Kellam, you said you saw Mr. McCants in a book;  
3 right?

4 A Yes.

5 Q You never met him before?

6 A Never.

7 Q Never talked to him?

8 A No, sir.

9 Q Never seen him on the street?

10 A No, sir.

11 Q Don't know how old he is?

12 A No.

13 Q Don't know if he has kids or not?

14 A No.

15 Q Don't know where he lives?

16 A No.

17 Q The only thing is you've seen him in a book?

18 A Yes.

19 Q And you're saying that he's BGF; right?

20 A Yes.

21 Q Who's his sponsor?

22 A I wouldn't be able to tell you that.

23 Q When did he become BGF?

24 A Wouldn't be able to tell you that either, sir.

25 Q When did he take the oath?

1 A Wouldn't be able to tell you that either, sir.

2 Q Was he a fox?

3 A He had to be a fox -- he had to be fox before he's BGF.

4 Q So was he a fox or BGF or you don't know?

5 A He was in the book, that's the most I can say.

6 Q Okay. So he's in the book, but you have no idea what he  
7 is in the book; correct?

8 A If you're in the book, you're BGF.

9 Q That's what you say; right?

10 A That's what I know because I'm also in that same book.

11 Q Now, you met -- you actually testified back on  
12 June 1st, 2016, in a federal trial; correct?

13 A Yes, sir.

14 Q You didn't say anything about Mr. McCants at that trial;  
15 right?

16 A No.

17 Q And you met with the government on June 17th, 2015;  
18 correct?

19 A Yes.

20 Q And in that one you spoke about BGF, BGF Greenmount;  
21 correct?

22 A I think so.

23 Q You didn't say anything about Mr. McCants in that  
24 interview, did you?

25 A Can't remember, sir.

1 Q Okay. Would anything help to refresh your  
2 recollection?

3 A You said, would I think help?

4 Q Would anything help to refresh your recollection?

5 A If you have something.

6 Q Okay.

7 MR. FRANCOMANO: Your Honor, if I could show the  
8 interview notes from that meeting, Your Honor.

9 THE COURT: Yes, you may show them.

10 Q (BY MR. FRANCOMANO) I apologize, the meeting was  
11 6/4/2015. Please take a look at this, don't read it out loud.

12 A Okay.

13 Q When you're done, just look up and let me know.

14 Do you remember being at that meeting?

15 A Yes.

16 Q Do you remember talking about BGF at that meeting?

17 A Yes.

18 Q Do you remember saying you know Mark?

19 A Yes.

20 Q Remember saying you know Black?

21 A Yes.

22 Q Remember saying you know G Rock?

23 A Yes.

24 Q Remember saying you know Dorsey?

25 A Yes.

1 Q Calvin?

2 A Yes.

3 Q Mike Smith?

4 A Yes.

5 Q Day Day?

6 A Yes.

7 Q Veto?

8 A Yes.

9 Q Uncle D?

10 A Yes.

11 Q Uncle Mark?

12 A Yes.

13 Q Diddy?

14 A Yes.

15 Q Uncle D -- I'm sorry, I think I already said that.

16 Will?

17 A Yes.

18 Q Ack?

19 A Who?

20 Q Ack, A-c-k?

21 A No.

22 Q Bree?

23 A Yes.

24 Q Thirsty?

25 A Yes.



1 Q Day Day?

2 A Yes.

3 Q Murda?

4 A Yes.

5 Q Itchy?

6 A Yes.

7 Q Troy?

8 A Me.

9 Q Savage?

10 A Yes.

11 Q Ty?

12 A Yes.

13 Q Rick Dorsey?

14 A Yes.

15 Q Rah-Rah?

16 A Yes.

17 Q Blinky?

18 A Yes.

19 Q Moan?

20 A Yes.

21 Q You didn't say McCants, did you?

22 A No.

23 Q You met with the government again and that was on

24 April 11th, 2017.

25 A Yes.

1 Q And in that meeting you were actually shown a picture of  
2 Mr. McCants; correct?

3 A Yes.

4 Q And you said, "I don't know him."

5 A Yes.

6 MR. FRANCOMANO: I have no further questions.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MS. HOFFMAN:

10 Q Mr. Kellam, you were asked some questions by Mr. Enzinna  
11 about the murder of G-Bae. Did you want to kill G-Bae?

12 A No.

13 Q Is it something you're proud of?

14 A Not at all.

15 Q You were also asked by Mr. Enzinna about why you left BGF  
16 and you said part of it was that you started cooperating with  
17 law enforcement; is that right?

18 A Yes.

19 Q Can you be in BGF if you're cooperating with law  
20 enforcement?

21 A No. You get a green light placed over the top of you.

22 Q And what is a green light?

23 A Green light is order hit. Anybody catch you, it's pretty  
24 much a price tag on your head. It's a bounty, fellow BGF  
25 members going to carry it out.

1 Q You were also asked by Mr. Enzinna about an interview  
2 that you did with a Baltimore homicide detective in January of  
3 2015 when you lied about killing G-Bae. And you said that you  
4 lied to stay out of prison; is that right?

5 A Yes.

6 Q Why did you later decide to tell the truth?

7 A It was hard to -- it was hard to keep lying, knowing I  
8 did it, knowing I took him away from his family.

9 Q Mr. Francomano asked -- also asked you about a lot of  
10 names that you mentioned during a meeting with the FBI in  
11 2016, do you remember that?

12 A Yes.

13 Q Did the FBI ever ask you about Digga?

14 A No.

15 MS. HOFFMAN: No further questions.

16 THE COURT: May the witness be excused?

17 MR. ENZINNA: Yes, Your Honor.

18 MR. FRANCOMANO: Yes, Your Honor.

19 THE COURT: The witness is excused. Thank you.

20 We'll take the morning break. Ladies and gentlemen,  
21 during this recess do not discuss the case among yourselves.  
22 Do not discuss it with anyone else. Do not allow yourselves  
23 to be exposed to any news articles or reports that touch upon  
24 the case or the issues it presents or any articles or reports  
25 that relate to any of the participants in the case. Avoid all

1 contact with any of the participants in the trial. Do not  
2 make any independent investigation of the law or the facts of  
3 the case. Do not look up anything related to the case or its  
4 participants on the internet. Do not consult an encyclopedia  
5 or a dictionary. 15 minutes. Please take the jury out.

6 (Jury left the courtroom.)

7 THE COURT: Who's next?

8 MS. HOFFMAN: The government's next witness will be  
9 Joseph Davis.

10 THE COURT: Thank you. 15 minutes.

11 (A recess was taken.)

12 THE COURT: Are we ready for the jury?

13 MR. MARTINEZ: Yes, sir.

14 THE COURT: Let's bring them in.

15 (Jury entered the courtroom.)

16 THE COURT: Be seated, please. The government may  
17 call its next witness.

18 MS. HOFFMAN: The government calls Joseph Davis.

19 THE COURT: Joseph Davis. Stand next the witness  
20 box there and face our clerk over here, please.

21 THE CLERK: And sir, if would you please raise your  
22 right hand to be placed under oath.

23 JOSEPH DAVIS,  
24 called as a witness, being first duly sworn, was examined and  
25 testified as follows:

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: You may have a seat, sir. And sir, if  
3 you would please speak into the microphone, state your first  
4 and last name and spell your first and last name.

5 THE WITNESS: Joseph Davis.

6 THE CLERK: And if you could spell --

7 THE WITNESS: J-o-s-e-p-h, D-a-v-i-s.

8 THE COURT: Ms. Hoffman, your witness.

9 DIRECT EXAMINATION

10 BY MS. HOFFMAN:

11 Q Good morning, Mr. Davis.

12 A Hmm.

13 Q Do you go by any other nicknames?

14 A Porky.

15 Q Where are you from originally?

16 A Greenmount, 20th Street, around that area.

17 Q Have you lived in Balt- -- oh, I'm sorry, if you could,  
18 I'm being told your voice is a little quiet. Can you pull the  
19 microphone towards your face a little bit? Thank you.

20 Have you lived in Baltimore most of your life?

21 A Yes, ma'am.

22 Q How old are you now?

23 A 41.

24 Q Are you currently in the custody of the U.S. Marshals  
25 awaiting sentencing in a criminal case?

1 A Yes, ma'am.

2 Q Can you tell the members of the jury how you came to be  
3 arrested?

4 A I was standing on the corner and police was watching me  
5 on the camera and they came and searched me and found a  
6 handgun on me and found drugs in the yard.

7 Q And which corner were you on at the time?

8 A North Avenue and Greenmount.

9 Q What were you charged with?

10 A Possession of a handgun; convicted felon in possession of  
11 a handgun; and drug trafficking; and possession of marijuana,  
12 heroin, and cocaine.

13 Q Were you charged initially in state court?

14 A Yes, ma'am.

15 Q And were you ultimately charged for the same crimes in  
16 federal court?

17 A Yes, ma'am.

18 Q Did you plead guilty in that federal case?

19 A Yes, ma'am.

20 Q And when you pled guilty, did you enter into a plea  
21 agreement with the government?

22 A Yes, ma'am.

23 Q As part of that agreement, did you agree to cooperate  
24 with law enforcement?

25 A Yes, ma'am.

1 Q Does part of your agreement with the government require  
2 you to testify truthfully as a witness in this case?

3 A Yes, ma'am.

4 Q What is your understanding of the benefit you will get if  
5 you testify truthfully?

6 A Reduction in my points.

7 Q Is it your hope that you'll get a lesser sentence?

8 A Yes, ma'am.

9 Q And does your eligibility for a sentencing reduction  
10 depend in any way on what happens to the defendants in this  
11 case?

12 MR. O'TOOLE: Object, Your Honor. Leading.

13 THE COURT: Yes. Sustained. Next question.

14 Q (BY MS. HOFFMAN) Under your plea agreement, what would  
15 happen if the government found out that you testified  
16 untruthfully?

17 A Perjury, charge of perjury.

18 Q And what would happen to your plea agreement?

19 A It would be abolished.

20 THE COURT: It would be --

21 THE WITNESS: Taken away, abolished.

22 MR. BUSSARD: Your Honor, I couldn't hear --

23 THE WITNESS: Taken away, abolished.

24 THE COURT: Abolished, is that --

25 THE WITNESS: Be taken away.

1 THE COURT: It would be taken away. Next  
2 question.

3 Q (BY MS. HOFFMAN) Under your plea agreement, what would  
4 happen if the government found out that you exaggerated?

5 A That I would be charged with perjury also.

6 Q And what would happen to your plea agreement?

7 A Be taken away.

8 Q Has anyone made you any guarantees about what your  
9 sentence will be in this case?

10 A No, ma'am.

11 Q And who is responsible for ultimately determining your  
12 sentence?

13 A The judge.

14 Q When you pled guilty in this case, was that your first  
15 criminal conviction?

16 A No, ma'am.

17 Q Were you convicted of a drug crime when you were 17 years  
18 old?

19 A Yes, ma'am.

20 Q And when you were 18 years old, were you convicted of a  
21 violent crime?

22 A Yes, ma'am.

23 Q What crime was that?

24 A Malicious wounding.

25 MR. O'TOOLE: I'm sorry, Your Honor, I couldn't



1 hear.

2 A Malicious wounding.

3 Q (BY MS. HOFFMAN) What sentence did you receive in that  
4 case?

5 A I received 19 years.

6 Q When did you finish serving that sentence?

7 A In Virginia, 2010.

8 Q You said in Virginia, was it a Virginia criminal  
9 conviction?

10 A Yes, ma'am.

11 Q Did you move back to Baltimore after you finished your  
12 sentence in 2010?

13 A Yes, ma'am.

14 Q Where in Baltimore did you move to?

15 A I moved to North Avenue and Poplar Grove when I first  
16 came back to Baltimore.

17 Q And where is Poplar Grove in relation to North and  
18 Greenmount?

19 A It's like -- North Avenue and Poplar Grove is like  
20 West Baltimore. And it's not that far, but it's like on the  
21 same block. As far as like North Avenue, it's probably like a  
22 good 20 blocks down.

23 Q Did you eventually move back to the Greenmount and North  
24 area?

25 A Yes, ma'am.

1 Q And did you eventually go back to selling drugs in that  
2 area?

3 A Yes, ma'am.

4 Q Were you convicted of possession with intent to  
5 distribute marijuana in 2012?

6 A Yes, ma'am.

7 Q And when did you finish your sentence for the marijuana  
8 conviction?

9 A I was sentenced to probation in -- it was like 2012, I  
10 finished in 2012.

11 Q Okay. Were you back on the streets by summer of 2012?

12 A Yes, ma'am.

13 Q And did you return to that Greenmount and North area  
14 again?

15 A Yes.

16 MR. BUSSARD: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. BUSSARD: The leading.

19 THE COURT: Overruled.

20 Q (BY MS. HOFFMAN) Mr. Davis, are you familiar with the  
21 gang the Black Guerilla Family, or BGF?

22 A Yes, ma'am.

23 Q And when you moved back to the Greenmount neighborhood,  
24 was there a BGF regime in that neighborhood?

25 A Yes, ma'am.

1 Q Were you a member of BGF at that time?

2 A No, ma'am.

3 Q Were you able to tell when others in the neighborhood  
4 were in BGF, were there signs or symbols that they used?

5 A I couldn't really tell the signs and symbols because they  
6 was real secretive. But you could tell like how they hung  
7 together and how they came around trying to run people away  
8 from their neighborhood or rob people or what -- so forth.

9 Q Did you have some friends who were actually in that BGF  
10 regime?

11 A Yes, ma'am.

12 Q And did they ever tell you about the goings on of --

13 MR. O'TOOLE: Objection.

14 THE COURT: Foundation. Sustained. Who?

15 Q (BY MS. HOFFMAN) Who were some of your friends in the  
16 BGF regime there?

17 A It was TJ, a guy named Tay, I used to socialize with a  
18 guy named Stimey also.

19 Q Did you learn about the BGF regime from TJ, Tay, and  
20 Stimey?

21 A Well, TJ.

22 Q Did you learn about who some of the other members in that  
23 BGF regime were from your friends, TJ and the others you  
24 mentioned?

25 MR. O'TOOLE: Asked and answered, Your Honor.

1 THE COURT: Overruled.

2 Q (BY MS. HOFFMAN) You can answer, Mr. Davis.

3 A Yes, ma'am.

4 Q And can you name some of the people who you learned to be  
5 in that BGF Greenmount Regime?

6 A It was Roscoe, Geezy, Stimey, Lil' -- it was Sneak.  
7 That's the three that I knew of.

8 Q Okay. I'm going to show you some pictures, I'm going to  
9 start with Government's Exhibit PHI, as in photos of  
10 individuals, No. 46. Who are we looking at here?

11 A Geezy.

12 Q And is he sitting here in the courtroom today?

13 A Yes, ma'am.

14 Q Can you point him out for the record?

15 A (Indicating.)

16 Q Can you identify an article of clothing he's wearing?

17 A A gray sweater.

18 THE COURT: Record will reflect the witness has  
19 identified the Defendant Johnson without objection.

20 Q (BY MS. HOFFMAN) You mentioned that Geezy was one of the  
21 people in the BGF Greenmount Regime; is that right?

22 A Yes, ma'am.

23 Q Did you have an understanding of what Geezy's role in  
24 that regime was?

25 A I don't really know his --

1 MR. O'TOOLE: Objection, Your Honor.

2 THE COURT: His answer to the question, she asked  
3 him and he doesn't know. Next question.

4 Q (BY MS. HOFFMAN) Did you see Geezy interacting with  
5 other members of BGF in the area?

6 A Yes, ma'am.

7 Q And based on seeing those interactions between Geezy and  
8 other members of BGF, did you gain an understanding of what  
9 his role was in the regime?

10 A Like he was basically --

11 MR. O'TOOLE: Objection.

12 THE COURT: Overruled. You may answer.

13 A He was basically kind of like running it, for real,  
14 basically.

15 Q (BY MS. HOFFMAN) Did you ever see him direct other  
16 members of BGF what to do?

17 A Yeah, the younger guys like Little Wesley and all them,  
18 yes, ma'am.

19 Q Did you ever see him tax other members of the regime?

20 A I didn't actually see him tax individuals, but we was in  
21 the building one time and he was like -- we was in there  
22 selling drugs and he was like, yeah, I'm going to start taxing  
23 you all, you all are going to start paying taxes around  
24 here.

25 Q And what did he mean by taxes?

1 MR. O'TOOLE: Objection.

2 Q (BY MS. HOFFMAN) What did you understand him to mean by  
3 taxes?

4 A To pay --

5 THE COURT: Overruled. You may answer.

6 A To pay certain fees. We was selling drugs in that area,  
7 to pay certain fees for -- to be around that area to sell  
8 drugs.

9 Q (BY MS. HOFFMAN) I'm going to show you  
10 Government's Exhibit PHI 27. Who are we looking at here?

11 A Roscoe.

12 Q And I believe you mentioned earlier that he was also a  
13 member of the BGF Greenmount Regime?

14 A Yes, ma'am.

15 Q And do you know whether he had any familial relationship  
16 with anyone else in that regime?

17 A Yes, ma'am, that's Geezy brother.

18 Q Going to show you Government's Exhibit PHI 45. Do you  
19 recognize this individual?

20 A Yes, ma'am.

21 Q Who is it?

22 A David.

23 Q And based on your interactions with members of the BGF  
24 regime, did you learn whether he was a member of that  
25 regime?

1 A Yes, ma'am.

2 Q And was he?

3 A Yes, ma'am.

4 Q Showing you now Government's Exhibit PHI 9. Who are we  
5 looking at here?

6 A Slay -- I mean, um, that's Little Wesley.

7 MR. BUSSARD: Objection, Your Honor.

8 THE COURT: Basis?

9 MR. BUSSARD: Just blurting out a name.

10 THE COURT: Overruled. You may answer.

11 A That's Little Wesley.

12 Q (BY MS. HOFFMAN) And is this the Little Wes who you  
13 mentioned before, who you saw was one of the people Geezy  
14 would tell what to do?

15 A Yes, ma'am.

16 Q Did you ever observe him selling drugs in that  
17 neighborhood?

18 A Yes, ma'am.

19 Q Did you ever purchase drugs from Lil' Wes?

20 A Yeah, I purchased marijuana from him before.

21 Q And where did you purchase those drugs from him?

22 A Out his house on -- it was a little block. I forgot the  
23 little block, that little block he was staying in.

24 Q Was it in the vicinity of Greenmount and North?

25 A Yes, ma'am.

1 Q Going to show you Government's Exhibit PHI 81. Do you  
2 recognize this individual?

3 A Yes, ma'am.

4 Q Who is that?

5 A Stimey.

6 Q And is this the same Stimey you mentioned earlier as  
7 being a member of the BGF Greenmount Regime?

8 A Yes, ma'am.

9 Q Going to show you Government's Exhibit PHI 30. Do you  
10 recognize this individual?

11 A Yes, ma'am.

12 Q Who is it?

13 A Mustafa.

14 Q And based on your interactions with members of the BGF  
15 regime there, did you learn whether he was a member of the  
16 regime?

17 A Yes, ma'am.

18 Q And was he?

19 A Yes, ma'am.

20 Q Mr. Davis, were members of BGF involved in criminal  
21 activities in the Greenmount neighborhood?

22 A Yes, ma'am.

23 Q Were they involved in selling drugs in the  
24 neighborhood?

25 A Yes, ma'am.



1 Q Were they involved in committing robberies in the  
2 neighborhood?

3 A Yes, ma'am.

4 Q Did you have friends who were robbed by BGF?

5 A Yes, ma'am.

6 Q Did you observe some of those robberies with your own  
7 eyes?

8 A Yes, ma'am.

9 Q Can you tell us about those incidents?

10 A Well, one incident -- well, a friend of mine's was robbed  
11 in the store and he ran out the store and he was shot at. His  
12 name was Lil' Black. He was robbed by Dave. And then another  
13 incident, a friend of mine's, Little David, was robbed. He  
14 was robbed by a guy named Roscoe, which was Geezy's brother.  
15 And then another robbery happened -- place -- when me and my  
16 wife was robbed in the building.

17 Q Now, I'll ask you -- I'll come back to that in a minute.  
18 You mentioned that a friend of yours named Little Black was  
19 robbed and shot at by Little Dave; is that right?

20 A Yes, ma'am.

21 Q And I'm going to put up Government's Exhibit No. PHI 45  
22 again. Is this who you were referring to when you said  
23 Little Dave?

24 A Yes, ma'am.

25 Q And you mentioned that he was robbed in a store, which

1 store was that?

2 A Chinese store on North Avenue and Barclay.

3 Q Do you know whether Little Dave actually hit

4 Little Black, did he shoot him?

5 A He shot him in his hand.

6 Q And where were you standing when this happened?

7 A I was standing like right there by the building looking  
8 at it.

9 Q And then you mentioned a second incident when a friend of  
10 yours named Dave was robbed by Roscoe. Is that the same Dave  
11 or a different Dave?

12 A A different Dave.

13 Q I'm going to put Government's Exhibit PHI 27 back up on  
14 the screen. Is this who you meant when you said Roscoe?

15 A Yes, ma'am.

16 Q I'm going to show you Government's Exhibit GM 7. What  
17 are we looking at here?

18 A That's Greenmount -- I mean, North Avenue and Barclay  
19 where the Chinese store was. Chinese store right here where  
20 it says New World. And the building I was standing at is  
21 right here, these little connected part --

22 THE COURT: You can draw, you can touch with your --

23 A This is the building. This is the Chinese store right  
24 here.

25 Q (BY MS. HOFFMAN) And is that the same Chinese store

1 where you saw Black be robbed and shot by Little Dave?

2 A Yes, ma'am.

3 Q Now, you mentioned that when you returned to that  
4 Greenmount area, you eventually went back to selling drugs; is  
5 that right?

6 A Yes, ma'am.

7 Q And what drugs did you sell?

8 A I sold marijuana and -- I mean, marijuana and coke,  
9 cocaine and marijuana.

10 Q And where were you selling drugs?

11 A I was selling drugs in this building right here.

12 Q And is that on North Avenue?

13 A Yes, ma'am.

14 Q Going to show you Government's Exhibit GM 8. What are we  
15 looking at here?

16 A That's the same building, it's the front door of it right  
17 here.

18 Q What kind of building is that?

19 A It's like a building that house probably low income  
20 people. I think it house low income people.

21 Q And what's the structure of the building like inside?

22 A You got like -- it's like three or four floor -- it's  
23 like three floors. It -- you got houses on each side, it's  
24 probably like a good 30 to 40 people reside in there, inside  
25 the building.

1 Q So it's sort of like an apartment building?

2 A Yes, ma'am.

3 Q And are the entrances to those apartments on the inside  
4 of the building or the outside?

5 A Inside.

6 Q Okay. So you enter through this front door that you drew  
7 a little mark on, and then inside you can enter various  
8 apartments?

9 A Right. Yes, ma'am.

10 Q Were members of BGF also selling drugs out of that  
11 building?

12 A Yes, ma'am.

13 Q Who was selling drugs out of that building?

14 A I was, I used to sell drugs. I see Geezy sell drugs in  
15 there also too.

16 Q Anyone else?

17 A Wesley, Roscoe, um --

18 Q When you said you would see them selling drugs, would you  
19 actually see hand-to-hand transactions?

20 A Yes, ma'am.

21 Q Was it your understanding that -- well, strike that.

22 To your understanding did members of BGF consider that  
23 building to be their drug turf?

24 MR. O'TOOLE: Objection. To consider.

25 THE COURT: Overruled. You may answer.

1 A Yes, ma'am.

2 Q (BY MS. HOFFMAN) And why did you believe that?

3 A Because it was like a couple of my friends used to be  
4 around there. And we would be in the building -- be around,  
5 and then they would come around and tell us we can't be around  
6 there or try to run us away from around there. Try to like  
7 rock us to sleep and try to rob us and stuff like that  
8 nature.

9 Q You used the phrase "rock us to sleep," what does that  
10 mean?

11 A That means try to befriend us, try to like be our friends  
12 and then send somebody else from a different neighborhood to  
13 rob us, call somebody up from a different neighborhood to rob  
14 us.

15 Q So I want to direct your attention now, Mr. Davis, to  
16 September and October of 2012, the fall of 2012 after you had  
17 served your sentence for your marijuana conviction. Did there  
18 come a time when members of BGF warned you to stop selling  
19 drugs around there?

20 A I --

21 MR. O'TOOLE: Objection, Your Honor.

22 THE COURT: Basis?

23 MR. O'TOOLE: Leading.

24 THE COURT: Overruled.

25 MR. O'TOOLE: Foundation and leading.

1 THE COURT: I'm sorry?

2 MR. O'TOOLE: Foundation and leading.

3 THE COURT: I understand your objection. It's  
4 overruled. You may answer.

5 A It was told to me through a friend that they want -- they  
6 don't want me around there. If I keep coming around there  
7 selling drugs, I was going to end up getting robbed or my life  
8 was going to be taken.

9 Q (BY MS. HOFFMAN) And was it your understanding that that  
10 message was being passed from someone specifically?

11 A Someone -- yes, it was sent from Geezy.

12 Q So when this friend -- who was the friend of yours who  
13 told you that?

14 A It was TJ and D, a guy named TJ and D.

15 Q So did TJ indicate to you he was passing on that message  
16 from Geezy?

17 A It assumed to me. It got to me from him because -- yeah,  
18 he was saying that Geezy said they don't want y'all around  
19 here selling no drugs. If you -- they catch you around, they  
20 was going to rob you all or try to -- I mean, take y'all  
21 life.

22 Q Did there come a time when you were robbed in that  
23 area?

24 A Yes, ma'am.

25 Q Where were you when that happened?

1 A I was in this building right here.

2 Q Were you inside?

3 A Inside, yes, ma'am.

4 Q Can you tell the members of the jury what happened?

5 A I was inside sitting on the -- I was inside, it's a  
6 little hallway path. I was in the stairway. It was me and my  
7 wife was in there. And me and my wife, we was talking on the  
8 stairway, so I notice it got quiet, and I'm like, what's going  
9 on? Somebody -- everybody -- it was like a lot of people was  
10 in there -- few guys in there, everybody just disappeared. So  
11 I told my wife, hold on, something ain't right, so I get up  
12 off the stairway.

13 And I get up off the stairway, and in the process of  
14 walking down the stairway -- this is inside the building  
15 stairway in the hallway. So I get up and a guy come to me  
16 with a mask on. He had green eyes. He come to me with a mask  
17 on. And the other guy, he didn't have no mask on, which was  
18 Mike Gwaltney. He come to me, he had the gun out. He asked  
19 me -- he said, "Where the weed at?" I said, "What weed?" I  
20 said, "I don't have no weed." Then he said, "Then from what I  
21 heard, you had weed." And he was like, "Give me the weed and  
22 the money."

23 So the other guy cocked the gun back and put it to my  
24 wife and told my wife to take her money out and get out her  
25 purse and stuff. So she started taking money out of her

1     purse. So the guy kept asking me where my money, I told him I  
2     don't have no money, and then he cocked the gun back. This is  
3     Mike Gwaltney. He cocked the gun back and he was -- my wife  
4     is like "don't kill him, don't kill him." I was like -- I  
5     told my wife I'm already -- she's like just give him the drugs  
6     and stuff. And so I told him the drugs was in the light  
7     fixture on the wall. So he went and got the drugs out the  
8     light fixture. And they took me and my wife phones and threw  
9     them in the hallway and ran out the front door.

10    Q     Were they both armed?

11    A     Yes, ma'am.

12    Q     And you mentioned they took the drugs from a light  
13    fixture, what in the way of drugs did they take?

14    A     Marijuana and it was crack cocaine.

15    Q     Did they also take money from you?

16    A     Yes, ma'am.

17    Q     About how much money did they take?

18    A     Like \$4- to \$500. Like \$4- or \$500.

19    Q     Now, you mentioned that one individual was masked and the  
20    other was Michael Gwaltney. Did you know at the time that it  
21    was Michael Gwaltney?

22    A     No, ma'am.

23    Q     But you later identified him as Michael Gwaltney?

24    A     Yes, ma'am.

25    Q     How did you come to learn that the person who robbed you



1 was Michael Gwaltney?

2 A Because I was looking on Facebook one day and a  
3 homegirl -- a friend, which is Mike Gwaltney's sister, I never  
4 knew. And I'm looking and I see his picture on Facebook. So  
5 I was like that's Mike -- that's the dude that robbed me. So  
6 I showed my wife. And she's like, yeah, that is him. So I  
7 called his sister up and was like, yeah, you know, your  
8 brother robbed me, blah, blah, blah, this and that. She's  
9 like no, that's -- I ain't going to allow that to happen to  
10 nobody, this and that. She was like, he was locked up at the  
11 time over at the jail. She was like, okay, when he call, I'm  
12 going to put you all on three-way. You all need to squash  
13 that, whatever, so forth.

14 Q What does it mean to squash something?

15 A Means to like, let the beef go and so forth. So I  
16 called -- I mean, he called and she had us on the three-way.  
17 And he was like, no, Porky, blah, blah, blah, that -- if I  
18 knew you was friends with my sister, I would have never had  
19 nothing -- that would never have went down like that, this and  
20 that. It was -- they sent me around there to rob you. This  
21 and that, because he's not actually from around there.  
22 Because they -- I mean, actually, they say -- he was telling  
23 me that Roscoe and Geezy and them was the one, and Mustafa,  
24 they didn't want me around. They was the ones who sent him  
25 around there to rob me.

1 Q Where was Michael Gwaltney from?

2 A He be all, over to my knowledge. He be -- he don't  
3 usually hang around the Greenmount area where we talking about  
4 though.

5 Q So as a result of that conversation with  
6 Michael Gwaltney, did you squash the beef?

7 A Pretty much, yeah. Yeah and -- yeah and no.

8 Q Okay. Are you on good terms with him now?

9 A We -- I talk to him. And I -- I have talked to him.

10 Q I'm going to show you Government's Exhibit PHI 36. Who  
11 are we looking at here?

12 A Mike Gwaltney.

13 Q So I want to turn back to the September, October 2012  
14 time frame -- well, first of all, let me ask you, when did you  
15 have that conversation with Mike Gwaltney, was it -- when in  
16 relation to the robbery?

17 A It was probably -- I'd say a week or two after the  
18 robbery, something like -- probably like a week or two after  
19 the robbery, I had to -- no, probably -- it was probably  
20 longer than that because I think it was -- I can't remember  
21 the approximately -- I mean, the exact time, but I know it was  
22 a good little -- probably like three weeks after the robbery,  
23 three weeks.

24 Q When you say three weeks, are you using that to mean  
25 literally three weeks or --

1 A Around. I'm going to say around.

2 Q So I want to turn your attention back to September or  
3 October of 2012. Before you had that conversation with  
4 Mike Gwaltney, did you encounter him again after the  
5 robbery?

6 A Yes, ma'am.

7 Q Can you tell us what happened on that occasion?

8 A I was standing on the front step of the building that --  
9 that you showed. I was standing on the front step of the  
10 building with a friend.

11 Q I'm going to put Government's Exhibit GM 8 back up on the  
12 screen.

13 A I was standing -- there's a person right here, you can  
14 see. I was standing right where he was at and a friend was  
15 beside me. And Mike Gwaltney was walking up the street right  
16 up this way and I -- when I spotted them, I seen them, and I  
17 had a gun on me. So I pulled the gun out because I told my  
18 homeboy, I said, man, that's the guy right there that robbed  
19 me. He said, man, you sure that's the guy who robbed you? He  
20 said, you sure? I said, yeah. So when I pulled the gun out,  
21 he started like fumbling and tried to turn around and like --  
22 and run, like he be trying to grab his gun and try to -- had  
23 his gun. So I was parked -- my car was parked right here,  
24 like right in this area. So when I pulled the gun out, I  
25 never shot. I went and ran and got in the car and pulled off.

1 Q Did you end up firing any shots that day?

2 A No, ma'am.

3 Q Did Mike Gwaltney fire any shots that day?

4 A No, ma'am.

5 Q I want to draw your attention now to November 17th of  
6 2012. Did there come a time when you learned that members of  
7 that BGF regime were actively trying to kill you?

8 A Yes, ma'am.

9 Q How did you learn that?

10 A I was in -- we was in the building. We was in this  
11 building right here, we was in the apartment building. And  
12 first it was Geezy and Roscoe came in there and we was in the  
13 little apartment building. So they came in here and they were  
14 like, yo, you know who robbed you, this and that. So it was  
15 like they was trying -- I knew they knew who robbed me. But  
16 he was like, man, ain't have nothing to do with. That's what  
17 he was telling me, ain't have nothing to do that. I was like,  
18 how you have nothing to do with that, in my mind, like, you  
19 all be together and I know you all hang together. So him and  
20 Roscoe was telling me they had nothing to do with it.

21 So Mustafa came to the door, and like, he bought some  
22 weed from me and shook my hand. So I was like, man, something  
23 don't seem -- something seem kind of odd. So that's when TJ  
24 and Tay came in there and was like, yo, something going --  
25 something ain't right, yo. Mike Gwaltney out walking around

1 the side of the building. Somebody -- I mean, something  
2 getting ready to happen, blah, blah, blah.

3 So they was like, Porky, you need to get up out of here,  
4 man, because I think they trying to do something to you. I  
5 think they're trying to kill you or something, so you need to  
6 get up out of here. So I got -- and ran out the back of the  
7 building. And my car was parked in the alley part and I  
8 pulled off.

9 Q Going to show you Government's Exhibit GM 5. Can you  
10 tell what we're looking at here?

11 A This is the back part of the building back here where you  
12 could park cars at and stuff. And it's a door, an exit door,  
13 in the back right here where I ran out of.

14 Q Were you able to escape unharmed?

15 A Yes, ma'am.

16 Q At that point did you decide to take matters into your  
17 own hands?

18 MR. O'TOOLE: Objection to the form of the  
19 question.

20 THE COURT: I couldn't hear the objection.

21 MR. O'TOOLE: Objection to the form of the  
22 question.

23 THE COURT: Sustained.

24 Q (BY MS. HOFFMAN) What happened next?

25 A What happened next was that I came back, like, I think

1 within the next day or -- it was the next day I came back. It  
2 was at nighttime, we was around there. It was me and a  
3 friend. We showed up around there. And I was like, man, I'm  
4 going to get them before they get me. That's how -- I mean,  
5 that's how I was. So when I came around there, I was -- I  
6 parked my car like up in this alley right here and then I  
7 walked down the street. I walked down towards the building.  
8 It was an alley up across Guilford over here. And I walked  
9 down across the alley. And I came -- it was a carry out --  
10 where the carry out -- where the Chinese store I showed you.

11 Q I'm going to show you Government's Exhibit No. GM 9.

12 A This carry out right here, there's a split. This little  
13 split right here on the side. So I came through the alley  
14 right there and I was waiting right there. And I seen it was  
15 Geezy and Wesley, I think, was standing in front of the  
16 building, like, they was standing out in front of the carry  
17 out right here. So I seen them, they walked past. They had  
18 got -- I guess they caught a sale because it was a fiend that  
19 came, they caught a sale.

20 Q What does it mean to catch a sale?

21 A A fiend or a person who buy drugs come buy some drugs.  
22 So they caught the sale. They went and started walking and  
23 they went inside the building. And then I came and walked up  
24 the street. I started walking up the street after they --  
25 into the -- walked up the street and went inside the building

1 with a hood on and I walked up to him and I shot him.

2 Q When you say "him" who are you talking about?

3 A Geezy.

4 Q Mr. Davis, when were you locked up on your current  
5 charge, do you remember?

6 A I was locked up, 2015, August the 30th.

7 Q And where were you in jail initially?

8 A I was at Baltimore City -- WDC, Baltimore City jail.

9 Q Is there a BGF presence in that jail?

10 A Yes, ma'am.

11 Q Is BGF dominant in that jail?

12 A Yes, ma'am.

13 Q Did there come a time when you decided to join BGF?

14 A Yes, ma'am.

15 Q Why?

16 A Because it was like a life or death situation. Like I  
17 got a lot of friends that's in with the BGF too. So they was  
18 like, man -- they knew about my situation with Geezy and all  
19 of them. And they was like, man, you might as well come over,  
20 blah, blah, blah, this and that. Whereas, though, if you come  
21 over, they won't be able to do nothing to you or harm you  
22 because you'll be considered as a brother.

23 Q So did you join for protection in effect?

24 A Yes, ma'am.

25 Q Did you have a sponsor?

1 A Yes, ma'am.

2 Q Who was that?

3 A Skinny Pimp.

4 MR. O'TOOLE: I'm sorry, I couldn't hear the  
5 response.

6 THE COURT: Answer the question: Who was your  
7 sponsor?

8 THE WITNESS: Skinny Pimp.

9 THE COURT: Skinny Pimp?

10 THE WITNESS: Yeah.

11 Q (BY MS. HOFFMAN) Did there come a time when you had a  
12 confrontation with other BGF members in the jail?

13 A Yes, ma'am.

14 Q Can you tell us what happened?

15 A When I first got over there, it was like -- they was like  
16 talking about the certain situation that happened between me  
17 and Geezy situation as far as the robbery --

18 MR. O'TOOLE: Objection. Can we approach? Can we  
19 approach?

20 THE COURT: Yes.

21 (Bench conference on the record.)

22 THE COURT: It's going to be like the confession  
23 booth. Mr. O'Toole, I'm ready to hear you. What is your  
24 concern?

25 MR. O'TOOLE: My concern is the line of responses.



1 He's -- the Court's been -- everybody's -- we're letting him  
2 testify, but we don't know who's talking. We don't know if  
3 it's in furtherance of a conspiracy, we don't know if the  
4 people are speaking are members of BGF or if they're not  
5 members of BGF. He's talking about "they" and all these  
6 different people.

7 MS. HOFFMAN: I can ask for clarification.

8 THE COURT: We need more precision. I've let it go  
9 as well because there haven't been objections to it. Other  
10 times it's been implied who it was. And then as the story has  
11 proceeded in sort of interlocking circles as opposed to in a  
12 lineal way, a lot of times the answer to the questions, in the  
13 Court's mind, have ultimately been answered. But you've got  
14 an objection to this approach now. And I think that the  
15 defendant, Mr. Johnson, is within his rights to insist on  
16 greater clarification about who it is he's talking about.

17 Now, I understand that the witness is inarticulate.  
18 And it might be that, you know, it's hard for government  
19 counsel to anticipate how he's going to answer a particular  
20 question and whether or not it's going to be answered with  
21 precision or without. And so my expectation is that when you  
22 get one of these nonspecific answers as to identity, that  
23 you're going to immediately circle back and try to nail that  
24 down before you go on to the next step in the story. And I'll  
25 permit that approach.

1           So it's going to happen one of two ways; he's going  
2           to give one of these answers, Mr. O'Toole's going to object on  
3           foundation grounds, and I'm going to sustain it. Or  
4           Mr. O'Toole's going to wait a second to see what your next  
5           question is, and if your next question is clearly calculated  
6           to develop the foundation, then, you know, we might be able to  
7           proceed in that manner.

8           MR. O'TOOLE: The only observation I would make, if  
9           the Court would allow me, is that I don't think this gentleman  
10          falls in the same category of the last gentleman that she  
11          talked about, who was particularly inarticulate and you  
12          allowed the government to lead him through the story.

13          THE COURT: Well, we're not leading. I'm not  
14          authorizing leading. And there are different species of  
15          inarticulation. This witness is able to explain the story  
16          actually quite coherently. It more has to do with his choice  
17          of language that I think creates ambiguity. But we'll allow  
18          the government to attempt to resolve those ambiguities by  
19          clarifying questions that will fill in the little bits of  
20          foundation that we might otherwise be missing in the first  
21          instance. All right. Let's keep going.

22          (The following proceedings were had in open court.)

23          Q       (BY MS. HOFFMAN) Mr. Davis, I want to back up a step and  
24          ask you who was it who confronted you.

25          A       Confronted me as far as?

1 Q I'm sorry, before we took a little break there, we were  
2 talking about a time when you were confronted in the jail by  
3 members of BGF.

4 A Yes, ma'am.

5 Q Who was it who confronted you?

6 A I had forgot the guy's name, but I know it was  
7 Skinny Pimp was one of them. It was another guy, Lil' -- his  
8 name is Lil' C, something like that. It was Lil' C. It was  
9 another little guy with Lil' C and --

10 Q And how did you know they were in BGF?

11 MR. O'TOOLE: Objection. Assumes facts not in  
12 evidence.

13 THE COURT: Technically. Sustained. Back up.

14 Q (BY MS. HOFFMAN) I'm sorry, did you know whether they  
15 were in BGF?

16 A Yes, ma'am.

17 Q And how did you know that?

18 A Because he -- it's like, you go in the bathroom and they  
19 ask you, "you know Ben?" Or something like that. I mean --  
20 or they ask you -- like some people like first getting in,  
21 some people don't know Ben, some people just know --

22 Q You're using the term Ben --

23 A The fox.

24 MR. O'TOOLE: May I object and move to strike the  
25 last response as in -- it's incoherent and not responsive.

1 THE COURT: I found it coherent. Overruled. But  
2 the next question was not setting up in a way that I was  
3 comfortable with. So restate the question that you're about  
4 to ask. Go ahead.

5 Q (BY MS. HOFFMAN) What does it mean when someone asks "do  
6 you know Ben?"

7 A Do you know Ben, it's the Oatmeal, Two S's and Three  
8 I's.

9 Q And what are the Two S's and Three I's?

10 A Two S's is basically like two sentences stating that  
11 should I ever become untrue and forsake the chosen few, this  
12 oath shall kill me.

13 Q And what, if any, relationship does that have to BGF?

14 A It's like their oath that they fall under.

15 Q So how did -- let's move back again. And how did you  
16 know that these people who confronted you were members of  
17 BGF?

18 A Because I was in the bathroom and they asked me did I  
19 know Ben and we started talking. And then he was like,  
20 yeah -- after I gave him the Two S's and Three I's, he was  
21 like, yeah, we got to further investigate your situation due  
22 to this certain fact, the situation about Geezy's situation  
23 and stuff on the street.

24 THE COURT: Mr. Davis, please slide your chair  
25 forward. A little more. Thank you.

1 Q (BY MS. HOFFMAN) And when they said they had to  
2 investigate your situation, what did you understand them to  
3 mean by that?

4 A Meaning that they was stripping me of my, I guess the  
5 flag or whatever, so forth, until they find out what's really  
6 going on with my situation with Geezy.

7 MS. HOFFMAN: Thank you, Mr. Davis. No further  
8 questions.

9 THE COURT: Mr. O'Toole.

10 CROSS-EXAMINATION

11 BY MR. O'TOOLE:

12 Q Mr. Davis, good afternoon.

13 A Good afternoon, sir.

14 Q Mr. Davis, I represent Mr. Gerald Johnson, who you  
15 pointed out and referred to as Geezy. Mr. Davis, I want to  
16 start with the conversation you had with Ms. Hoffman about  
17 your plea that you took in this case. I want to ask you  
18 something before I do that. In the other cases that you  
19 talked about where you went to jail and you got sentenced, had  
20 you pled guilty or had you gone to trial?

21 A I can't hear you.

22 Q Pardon me?

23 A I couldn't hear you.

24 Q In the other cases where you talked about  
25 with Ms. Hoffman, had you pled guilty in those cases or did

1 you go to trial?

2 MS. HOFFMAN: Objection.

3 THE COURT: Overruled. Did you plead or did you --

4 A I plead guilty.

5 Q (BY MR. O'TOOLE) All right. Have you ever gone to trial  
6 and been found guilty by a jury?

7 A Have I gone to trial and been found guilty by a jury?

8 Q Yeah, have you ever gone to trial or all of your  
9 sentences, did they come from your pleading guilty?

10 A No, ma'am -- I mean, no, sir, I went to trial.

11 Q You went to trial. Which case did you go to trial on?

12 A Malicious wounding, two counts of malicious wounding.

13 Q That's the one you got 19 years on?

14 A Yes, ma'am -- I mean, yes, sir.

15 Q You can call me whatever you want. That's fine.

16 Mr. Davis, you're 41 years old?

17 A Yes, sir.

18 Q In 2015 when you caught the charge that we're talking  
19 about today that you pled guilty to, how many years had you  
20 spent in jail? At that time you were what, you were 39 years  
21 old?

22 A 30 --

23 Q You were 39 years old when you were caught in this most  
24 recent charge that you pled guilty to; right?

25 A Yes, sir.

1 Q How many years had you been in jail in your adult life at  
2 that point?

3 A In my adult life at that point, as far as like --

4 Q I'm just curious --

5 A -- overall?

6 Q Yeah, overall. I'm curious from the time you became an  
7 adult until you were 39 years old and you caught this most  
8 recent charge, how many years had you been in jail?

9 A How many years? Probably like -- like 20, probably like  
10 20.

11 Q All right. So by the time you were almost 40, you had  
12 spent 20 years in jail as an adult?

13 A I mean, approximately around 20.

14 Q Okay. So is it fair to say by the time you were 39, and  
15 you caught this most recent charge that you talked about with  
16 Ms. Hoffman, you had been in jail almost your entire adult  
17 life?

18 A Pretty much, yeah.

19 Q All right. Had you gotten used to jail or had you  
20 decided you were tired of jail?

21 MS. HOFFMAN: Objection.

22 THE COURT: Overruled. I'll allow him to answer.

23 A I mean, what type -- I really ain't -- I didn't get used  
24 to jail. How can I get used to jail?

25 Q (BY MR. O'TOOLE) All right. So you didn't want to be in

1 jail anymore, did you?

2 A Hmm.

3 Q And you told us --

4 THE COURT: Hold on. We need an answer. You didn't  
5 want to be in jail anymore, is the question.

6 A No. No, sir.

7 THE COURT: Next question.

8 MR. O'TOOLE: So the answer is no. Thank you,  
9 Your Honor.

10 Q (BY MR. O'TOOLE) Mr. Davis, you told us when you -- I'm  
11 going to skip forward and come back, but you told us that when  
12 you were robbed, you were with your wife selling drugs in that  
13 building you showed us; right?

14 A Yes, sir.

15 Q When did you get married?

16 A I got married like 2011, 2011.

17 Q Are you still married now?

18 A Yes, sir.

19 MS. HOFFMAN: Objection.

20 THE COURT: Relevancy?

21 MS. HOFFMAN: Relevance.

22 THE COURT: I'll give you some latitude,  
23 Mr. O'Toole.

24 Q (BY MR. O'TOOLE) Well, Ms. Hoffman -- Mr. Davis,  
25 Ms. Hoffman asked you where you grew up and where you were in



1 jail and where you lived, where you moved to. I'm wondering,  
2 so the jury can know, during this time period were you a  
3 married man?

4 A During this -- what time period?

5 Q Well, you just got married and you were married in  
6 2000 --

7 A '11.

8 Q When you got robbed; right?

9 A Yes.

10 Q And when was that, 2012?

11 A I got robbed in 2012.

12 Q '12, all right. And you were married then. When did you  
13 get married before that?

14 MS. HOFFMAN: Objection.

15 MR. O'TOOLE: Your Honor, I'm just trying to find  
16 out --

17 A I said I got married in 2011 --

18 THE COURT: You can't answer until we tell you to  
19 answer, sir.

20 Q (BY MR. O'TOOLE) 2011, so you had been married one year?

21 THE COURT: The objection is overruled.

22 MR. O'TOOLE: I'm sorry.

23 THE COURT: You may ask and -- you may inquire,  
24 Mr. O'Toole.

25 MR. O'TOOLE: Thank you. Your Honor, I apologize

1 for talking over you. I didn't hear you speaking actually.

2 Q (BY MR. O'TOOLE) Mr. Davis, the Court asked you to  
3 answer -- you were married in 2012 -- you had been married,  
4 when did you get married?

5 A I got married in 2011.

6 Q All right. Thank you. It wasn't a trick question, I  
7 just wanted to know. And was that your first marriage?

8 A Yes, sir.

9 Q All right. And you told us you're still married now?

10 A Yes, sir.

11 Q All right. You talked about your plea of guilty in  
12 this -- in the case that you pled guilty to; right? The case  
13 that you agreed to cooperate and pled guilty; correct?

14 A Yes, sir.

15 Q All right. In that case you were caught -- you were  
16 caught conspiring to rob somebody; is that right, it was a  
17 object property?

18 MS. HOFFMAN: Objection.

19 THE COURT: What's the objection?

20 MS. HOFFMAN: It misstates the evidence in the  
21 record.

22 THE COURT: What were you convicted of --

23 THE WITNESS: Convicted of -- this sentence --

24 THE COURT: Let's back up. Mr. O'Toole.

25 MR. O'TOOLE: Right.

1 THE COURT: You -- the objection is sustained. You  
2 may rephrase your question.

3 Q (BY MR. O'TOOLE) All right. This most recent conviction  
4 that you talked about with Ms. Hoffman, the conviction that  
5 you agreed to testify and cooperate with the government, what  
6 were you found guilty of, what did you plead guilty to?

7 A I plead guilty to a possession of a handgun.

8 Q Right.

9 A Felon in possession of a handgun. Intent to distribute  
10 and distribute heroin, cocaine, marijuana.

11 Q All right. So I misstated --

12 A And drug trafficking.

13 Q So I misstated that it was robbery. So the Count 1 was  
14 possession and intent to distribute controlled dangerous  
15 substances and possession of a handgun, having had a violent  
16 conviction in the past; correct?

17 A Yes, sir.

18 MS. HOFFMAN: Objection.

19 THE COURT: Let me see counsel.

20 (Bench conference on the record.)

21 THE COURT: All right. I'm trying to give you some  
22 latitude --

23 MR. O'TOOLE: I appreciate it.

24 THE COURT: -- but in discovery you would have  
25 gotten his rap sheet.

1 MR. O'TOOLE: No, I have his rap sheet.

2 THE COURT: So then confine your questions to  
3 exactly what the rap sheet says. I've heard you refer to  
4 conspiracy, convicted of possession of a firearm after you had  
5 a violent felony. I don't know of any such federal offense.

6 MR. O'TOOLE: Thank you.

7 THE COURT: So just make it precise. Otherwise,  
8 she's going to keep chipping at you and you know --

9 MR. O'TOOLE: Well, she can do that if she wants.

10 THE COURT: And I will keep sustaining them until  
11 you get the convictions correct.

12 MR. O'TOOLE: Thank you.

13 (The following proceedings were had in open court.)

14 THE COURT: Next question.

15 Q (BY MR. O'TOOLE) Mr. Davis, as I was asking you -- what  
16 I'm trying to get to -- it's not a trick question. What I'm  
17 trying to find out, when you decided to plead guilty and  
18 cooperate, this was back in 2016; correct, the date of your  
19 plea was in October or -- October 31st of 2016; correct?

20 A Yes, sir.

21 Q All right. And you had been arrested for that crime  
22 about a year before; correct?

23 A Yes, sir.

24 Q So you'd already been in jail on that charge for about  
25 one year?

1 A Yes, sir.

2 Q And you were told by your lawyer that if you were  
3 sentenced in that case, the penalties for the crimes for which  
4 you were offered to plead guilty could carry 20 years for the  
5 Count 1 and ten years for Count 2; correct?

6 A Yes, sir.

7 Q All right. Now, when you were caught with the drugs --  
8 after you had been in jail for all this time and you're caught  
9 with the drugs in 2015, is it true that you were -- you had 75  
10 gel caps of heroin; is that correct?

11 A I didn't have it on me.

12 Q You had it in -- you had it nearby you; correct?

13 A Uh-huh.

14 Q You pled guilty to being in possession of 75 gel caps of  
15 heroin; correct?

16 MS. HOFFMAN: Objection.

17 A Yes, I pled guilty.

18 Q (BY MR. O'TOOLE) All right. And you also pled guilty --

19 THE COURT: Is there an objection or not?

20 MS. HOFFMAN: Objection.

21 THE COURT: What's the objection?

22 MS. HOFFMAN: It misstates facts in evidence.

23 THE COURT: Well, he just -- he answered in the  
24 affirmative. So overruled. The question was, did you have 75  
25 gel caps of heroin and I heard the witness say yes.

1 Q (BY MR. O'TOOLE) And you also pled -- thank you.

2 THE COURT: So do you continue to object? I mean,  
3 that's what the witness's answer is.

4 MS. HOFFMAN: I'll withdraw it.

5 Q (BY MR. O'TOOLE) You also were in possession -- you were  
6 arrested with 22 baggies of marijuana; correct?

7 A It wasn't in my possession, but I was charged with it.

8 Q But when you pled guilty, you pled guilty of being in  
9 possession of it; correct?

10 A Yes, sir.

11 Q All right. And you also had 16 vials of cocaine in your  
12 possession that you pled guilty to in that conviction;  
13 correct?

14 A Yes, sir.

15 Q All right. And you also had 6.2 grams of cocaine powder;  
16 correct?

17 A Yes, sir.

18 Q All right. Now, you weren't asked about this in your  
19 direct examination, but I want to ask you, what is a 5K, what  
20 is a 5K?

21 A A 5K?

22 Q Do you know what that is?

23 A No.

24 Q Do you know that in your plea agreement the government  
25 offered, if you were cooperative and if you told the truth and

1 if you gave substantial assistance in the prosecution of  
2 another, the government might file something called a 5K1.1 at  
3 your sentencing. Do you remember that?

4 A Um -- it was basically -- it wasn't a 5K, it wasn't a 5K  
5 that I know. I think it was a plea agreement, just part of my  
6 plea agreement.

7 Q Mr. Davis, is there a document that I could show you that  
8 would help you remember what a 5K was? If I showed you your  
9 plea agreement, would you remember what a 5K was?

10 MR. MARTINEZ: Objection.

11 MS. HOFFMAN: Objection.

12 MR. O'TOOLE: Two objections, Your Honor.

13 THE COURT: Overruled. If you saw your plea  
14 agreement, would it refresh your recollection about the terms  
15 of your plea agreement?

16 THE WITNESS: Yes, sir.

17 THE COURT: Show him his plea agreement.

18 Q (BY MR. O'TOOLE) Look up when you're finished.

19 A You said paragraph 3?

20 THE COURT: Point out the paragraph you would like  
21 the witness to read, Mr. O'Toole.

22 Q (BY MR. O'TOOLE) Paragraph 4. This paragraph 4, from  
23 the top to the bottom.

24 Are you finished?

25 A (No verbal response.)

1 Q Okay. Now, Mr. Davis, I asked you before you read this  
2 paragraph, do you remember if as part of your plea agreement  
3 with the government, if you cooperated truthfully and if you  
4 were of substantial assistance in the prosecution of another,  
5 and if the government decided to do it, it could file  
6 something with the Court called a 5K motion. Do you remember  
7 that?

8 A Yes. Yes, sir. That's -- but that wasn't in my plea  
9 agreement.

10 Q All right. But it was -- is it true that it was attached  
11 to your plea agreement as a sealed part of your agreement?

12 A Yes, sir.

13 Q So that was all part -- it was sealed, but it was part of  
14 your plea agreement. And you knew if you pled guilty, if you  
15 did what you were agreeing to do -- the government, the  
16 prosecutors might decide, if you did what you were supposed to  
17 do, to file a 5K; right, isn't that true?

18 A Yes.

19 Q All right. Now, the 5K that you got --

20 MS. HOFFMAN: Objection.

21 THE COURT: Counsel you can approach.

22 MR. O'TOOLE: I'll withdraw that, Your Honor.

23 THE COURT: All right. The question is withdrawn.

24 Q (BY MR. O'TOOLE) Mr. Davis, I'm not asking you -- let me  
25 withdraw the question and ask you something different. In the



1 requirements of the 5K, in order for you to have a 5K in the  
2 future, it was required for you to do something; correct?

3 A In order for me to have a 5K in the -- what you mean?

4 Q In order for you to have the possibility of getting your  
5 sentence reduced by cooperating, all right, in order for that  
6 to get -- happen, you would have to have the government file  
7 what's called a 5K motion in connection to your sentencing;  
8 correct?

9 A I don't -- I don't -- I'm not really familiar with it.  
10 Like, I'm not really familiar. My lawyer go over it with  
11 me.

12 Q Now, when you were charged with this crime and you stayed  
13 in jail for one year -- you were charged in the middle of  
14 2015; correct?

15 A Yes, sir.

16 Q And you stayed in jail until October of 2016; correct?

17 A Yes, sir.

18 Q And at that time you had a lawyer; right? And the lawyer  
19 told you that you're going to go to jail for a long time, if  
20 you're convicted for selling drugs and having a handgun;  
21 correct?

22 MS. HOFFMAN: Objection.

23 THE COURT: Sustained.

24 Q (BY MR. O'TOOLE) I don't want to ask you what your  
25 lawyer said to you, but --

1 THE COURT: You just did. Don't do that again.

2 MR. O'TOOLE: I withdraw it, Your Honor.

3 THE COURT: Next question.

4 MR. O'TOOLE: Thank you.

5 Q (BY MR. O'TOOLE) After speaking with your lawyer over  
6 the course of time, was it your understanding that you stood  
7 the chance of spending a great deal of time in jail if you  
8 were convicted of the charge you were -- that you had before  
9 you; right?

10 A If I found guilty, yes.

11 Q Yeah. Right. So you were going to go for to jail for a  
12 long time and you didn't want to do that, did you? You didn't  
13 want to go to jail for a long time, you'd rather go to jail  
14 for a shorter time; right?

15 A So I got to pay a lawyer.

16 Q All right. So you got a lawyer and after you talked with  
17 the lawyer, it was your decision to plead guilty and cooperate  
18 with the U.S. Attorney's Office; correct?

19 A Well, actually, I cooperated at the police station.

20 Q All right. Let's go beyond there for just a second.  
21 Indulge me. What I'm asking you is, in the course of your  
22 discussions with your lawyer and with the prosecutors, you  
23 came to the decision that it was best for you to plead guilty  
24 in hopes of getting a smaller sentence, as you told  
25 Ms. Hoffman; right?

1 A Yeah.

2 Q All right. This is not -- I'm not trying to trick you,  
3 I'm just trying to ask you about this 5K. And the 5K, if I  
4 understand it right and tell me if I'm right, is that your  
5 understanding that the government, at the sentencing, can ask  
6 for a certain sentence, certain number of years; correct?

7 A Yes.

8 Q All right. Isn't it true that under the agreement with  
9 the 5K, the document that I just showed you, isn't it true  
10 that you are not bound by that guideline range and you could  
11 ask the Court to give you even a lower sentence; correct?

12 A I'm not familiar.

13 MR. O'TOOLE: Your Honor --

14 Q (BY MR. O'TOOLE) Mr. Davis, can I show you back the  
15 document you just read?

16 MR. O'TOOLE: Your Honor, can I approach?

17 THE COURT: Are you seeking to refresh his  
18 recollection?

19 MR. O'TOOLE: Yes, sir.

20 THE COURT: You may approach. Point out to him  
21 which paragraph you'd like him to read.

22 Q (BY MR. O'TOOLE) I ask you to read the very bottom of  
23 the paragraph you read before. It's actually highlighted in  
24 yellow and there's some italics, there's some black bold  
25 letters in there. If you could read it to yourself, just pay

1 attention to the part that's marked. Okay?

2 A (No verbal response.)

3 Q So I ask you again, okay -- give that back -- Mr. Davis,  
4 is it true that if you cooperate, and if the government  
5 decides to file this 5K that we've been discussing, the  
6 government will suggest a certain sentence to the Court, is  
7 that your understanding?

8 A Yes.

9 Q All right. Is it also your understanding from what you  
10 just looked at that -- your memory is refreshed, now I ask  
11 you, are you able to ask for a sentence even lower than what  
12 the government is asking for?

13 A I'm not -- am I able to ask for a lower sentence?

14 Q Yes, you and your lawyer?

15 A I think my lawyer can argue for a lower sentence,  
16 probably.

17 Q Okay. So let me just summarize this and move on. With  
18 the 5K -- and you were hoping to get a 5K; right, wasn't that  
19 the point of the whole deal?

20 A I mean, my point in the whole deal was to tell the  
21 truth.

22 Q And for what purpose?

23 A Huh? For what purpose?

24 Q Correct.

25 A Probably get a lesser sentence too.

1 Q Okay. So the purpose of your cooperating is to get a  
2 lesser sentence for you, Mr. Davis; correct? Your purpose was  
3 to help yourself by cooperating with the government; isn't  
4 that right?

5 A Yes.

6 Q All right. So the government says in there -- isn't it  
7 true the government told you that if they believe you and if  
8 your are substantially assisting them in the prosecution of  
9 somebody else, that you -- they may file a 5K, which would  
10 allow the Court to give you a lower sentence then you might  
11 otherwise --

12 MS. HOFFMAN: Objection.

13 THE COURT: You may approach.

14 (Bench conference on the record.)

15 THE COURT: Yes, ma'am.

16 MS. HOFFMAN: I think number one, it's been asked  
17 and answered, but number two --

18 THE COURT: Well, it's cross-examination and that's  
19 how that works, so there's no problem with asked and answered.  
20 What else?

21 MS. HOFFMAN: Number two, I think we're getting into  
22 what the lawyers told him and I object to that.

23 THE COURT: Well, I don't know that we're anymore in  
24 there now than we have been previously. Overruled.

25 But Mr. O'Toole, I think the problem is, you're --

1 you're trying to speak with him at a level that he can't get  
2 it. He understands his deal. He just doesn't understand the  
3 interplay of precise terminology like a 5K. That's my own  
4 observation. It's your examination.

5 MR. O'TOOLE: I think you're right.

6 THE COURT: That's what's gone wrong here. And  
7 that's why he -- I don't think the witnesses is attempting to  
8 be obstreperous or is trying to resist or anything. He just  
9 flat doesn't understand because of his level of  
10 sophistication. I do believe that he understands his deal.  
11 He has acknowledged that he hopes to get a lighter sentence in  
12 relation to his cooperation. I really think the time we're  
13 spending on the 5K is really not productive, but --

14 MR. O'TOOLE: I agree with the Court and I accept  
15 that and thank the Court. However, I think that it hasn't  
16 been testified to yet that he -- from his mouth, that the  
17 level of cooperation may affect his ability to get a -- I want  
18 to --

19 THE COURT: Well, why don't you just lead him right  
20 through that and state it just the way you've just said it to  
21 me.

22 MR. O'TOOLE: I promise you I'm trying to, but it's  
23 not working. I'll try again.

24 MR. MARTINEZ: While we're addressing this issue, I  
25 think some guidance from the Court would be helpful as to

1 where the boundary is in terms of cross-examining him about  
2 specific sentences he expects to receive or specific guideline  
3 departures or how big the departure is. I think the case law  
4 in this circuit, the *Cropp* case in particular, says that's  
5 over the line. I think what that case says is that you can  
6 cross-examine somebody about, does your deal get -- are you  
7 expecting a lesser sentence, do you do everything that's asked  
8 of you. You can't then get into quantifying.

9 THE COURT: We haven't gone there yet.

10 MR. MARTINEZ: I thought we were starting to.

11 THE COURT: I haven't heard that.

12 MR. O'TOOLE: The only thing that I think is  
13 important -- I'm going to try to get it to the point where  
14 it's -- I can communicate better than I've been doing, but  
15 will be that his deal can be affected, he can ask for a  
16 guideline different than the government's asking.

17 THE COURT: Not a guideline, a sentence.

18 MR. O'TOOLE: A sentencing range.

19 THE COURT: I just encourage you to get down to  
20 the --

21 MR. O'TOOLE: All right.

22 THE COURT: -- the most basic of facts and  
23 circumstances.

24 MR. O'TOOLE: All right. Thank you.

25 THE COURT: Very good.

1 (The following proceedings were had in open court.)

2 THE COURT: Okay. Next question, Mr. O'Toole.

3 MR. O'TOOLE: Thank you.

4 Q (BY MR. O'TOOLE) Mr. Davis, we've been talking about  
5 your plea deal, we've been talking a little bit about your  
6 cooperation. And do you understand that your sentence that  
7 you get some day in the future can be affected by your help  
8 that you give the government?

9 A So you saying it can be -- you said it can be affected?

10 Q Yeah, if you help the government, your sentence might be  
11 lower.

12 A My sentence might be low, uh-huh.

13 Q Right?

14 A Correct.

15 Q All right. So that's the goal. You know what a goal is;  
16 right, you know that a goal is something you try to get in the  
17 future?

18 A Yeah.

19 Q All right. So the goal here is for Mr. Davis to get a  
20 smaller sentence, if you help; right, correct?

21 A Correct, I guess.

22 Q All right. So do you understand that what the 5K does,  
23 it opens the door -- opens the door for the Court to give you  
24 a sentence that might be lower, is that your understanding?

25 A Yes, sir. But in my plea agreement it states that



1 neither the prosecutor or my lawyer can make a prediction of  
2 my -- how much time I get. The judge -- it's up to the judge.

3 Q Right and --

4 A They could just make a recommendation.

5 Q Right. And you told us before that there were no  
6 promises, the judge and the prosecutor couldn't promise you  
7 what the judge would do; right?

8 A Yeah.

9 Q And what the judge does in the future, he'll be thinking  
10 about how much help you were to the government; right?

11 Is that right? When the judge sentences you, he'll be  
12 told -- he or she will be told that you were helpful to the  
13 government; isn't that right?

14 A I think that's how that work, I don't -- I mean --

15 Q All right. Have you ever had a cooperation agreement  
16 before in any of your convictions?

17 A No, sir.

18 Q Have you ever testified in court before?

19 A No -- yes, sir.

20 Q In court or in grand jury?

21 A In court.

22 Q So when was that that you testified?

23 A Probably -- let me see. Probably like four months ago,  
24 six months ago.

25 Q Was it in a case related to the BGF?

1 A No, sir.

2 Q No. Different case?

3 A Uh-huh.

4 Q All right. And your purpose of testifying in that  
5 case -- is that a different judge than you had in the case  
6 we've been talking about?

7 A What you mean different?

8 Q Was that a different cooperating agreement or was that  
9 under the same cooperation agreement?

10 A Same agreement.

11 Q All right. So now this is your second chance, your  
12 second try to help yourself; correct?

13 MS. HOFFMAN: Objection.

14 THE COURT: Overruled.

15 Q (BY MR. O'TOOLE) You may answer, sir.

16 A Say that again.

17 Q All right. You testified once before under this  
18 cooperating agreement that we've been talking about; right?

19 A Yes.

20 Q And you went to court with a jury and a judge and you  
21 testified; right?

22 THE COURT: You have to answer out loud.

23 A Yes.

24 Q (BY MR. O'TOOLE) All right. And the purpose of that  
25 testimony was to help you get a smaller sentence; right?

1 A It was -- it's all combined.

2 Q Right. It's all in one --

3 A One agreement.

4 Q Exactly. So under the agreement, you help as long as the  
5 government is interested in your help; right?

6 A Okay.

7 Q If you have nothing else to say, then it's time to go to  
8 sentencing; is that right?

9 A Yes.

10 Q All right. So now you're here for a second time before  
11 this jury and this judge to help the government in this case;  
12 right?

13 A Yes.

14 Q Okay. So the more -- is it fair to say that you think  
15 the more you help the government, the more it's going to help  
16 Mr. Davis; that's correct, isn't it?

17 A I don't think it's -- it ain't the more help, we already  
18 have a written plea agreement.

19 Q All right. But the plea agreement called for you to come  
20 before this jury and tell them your story; right?

21 A Yes.

22 Q All right. So you've been ready and you've been getting  
23 ready to come here today to tell this jury your story;  
24 correct?

25 A What you mean ready?

1 Q Well, you've been talking -- you've been meeting with the  
2 government and talking about what you know from the past and  
3 from the community; right?

4 A Yes.

5 Q And they've been helping you get ready for your  
6 testimony; correct?

7 A What you --

8 Q I mean, they've been asking you or telling you what  
9 they're going to ask you in court; right?

10 A They just tell me to tell the truth.

11 Q Right. And they showed you pictures; right?

12 A Hmm.

13 Q Asked you if you know this person; right?

14 A Yes.

15 Q And you said yes or no; right?

16 A Yeah.

17 Q And they showed you another picture and asked you if you  
18 know this person; correct?

19 A Hmm.

20 Q All right. So when they came to this trial -- the other  
21 trial you had didn't involve these two prosecutors, did it?  
22 The other case you testified were different prosecutors;  
23 right?

24 A Yes, sir.

25 Q All right. So when these prosecutors started talking to

1 you, they wanted to know about the Black Guerilla Family;  
2 right?

3 A Yes, sir.

4 Q And they wanted to know about Mr. Johnson; right?

5 A Yes, sir.

6 Q And they asked you if you knew Mr. McCants; right?

7 A Yeah.

8 Q They asked you -- and they asked you if you knew  
9 Mr. Jones; right?

10 A Yes, sir.

11 Q All right. And you told them what you knew -- what you  
12 thought you knew about Mr. Johnson; correct? That's right,  
13 isn't it?

14 A I told them what I knew.

15 Q All right. And they asked you -- they wanted to know  
16 about Mr. Johnson; correct?

17 A Uh-huh, I told them what I knew.

18 Q Correct. Okay. That's exactly what I'm asking.

19 I want to ask you a little bit about the testimony that  
20 you gave us about being robbed by Mr. Gwaltney. Do you  
21 remember that testimony --

22 A Yes.

23 Q -- earlier with Ms. Hoffman? All right.

24 Did you know Mr. Gwaltney before he walked into that  
25 stairwell with you and your wife?

1 A No, sir.

2 Q You had never seen him before?

3 A No, sir.

4 Q You didn't know him?

5 THE COURT: You have to answer.

6 A No, sir.

7 Q (BY MR. O'TOOLE) And the person with him had a mask;  
8 right?

9 A Yes, sir.

10 Q Did you ever see who that person was?

11 A No. I didn't -- he had a mask. I just seen his eyes. I  
12 knew his eye color.

13 Q All right. What color was his eyes?

14 A Green.

15 Q He had green eyes?

16 A Uh-huh.

17 Q You could tell that from seeing him?

18 A Because he had a (indicating.)

19 Q All right. And you got robbed; right?

20 A Yes.

21 Q All right. And you told the jury, you told Ms. Hoffman  
22 that the -- it was your belief that Mr. Johnson told Gwaltney  
23 to come rob you; is that right?

24 A It was -- I told him that it was Mustafa, Geezy, and  
25 Roscoe, all of them be together. Because later on I found

1 out -- when I spoke to Mike Gwaltney, he told me -- we spoke  
2 through the vent when I was up Supermax because he was in  
3 administration. I talked to him and he said it was Roscoe and  
4 what you call -- Roscoe, Mustafa, and Geezy was the one who  
5 sent him -- sent me around -- to get me away from around  
6 there.

7 Q All right. And that was the truth, as far as you knew  
8 it?

9 A Yes, sir.

10 Q And when you talked to Mr. Martinez and Ms. Hoffman  
11 getting ready for trial, back on October 17th of this -- last  
12 month you talked to them, didn't you?

13 A Yes, sir.

14 Q Isn't it true that you told them at that time, just a  
15 month ago, that you thought -- it was your understanding that  
16 Gwaltney told you that Roscoe and Mustafa sent Gwaltney to rob  
17 and not Mr. Johnson, isn't that true?

18 A Yes. Reason why I didn't mention his name because they  
19 all be together any way, all of them be together. They be  
20 amongst each other.

21 Q So this was a short hand -- this was just a short way for  
22 you to say it. When you said that he was sent by Davis --  
23 excuse me, sent by Roscoe and Mustafa, what you really meant  
24 was something else; right?

25 A Yeah, I mean, I meant what was said.

1 Q Did you mean what you say or did you mean what you meant?  
2 I'm just asking, when you told them -- when you answered their  
3 question, you tried to tell the truth; right?

4 A I told the truth.

5 Q All right. And when you did, the truth on October 17th  
6 was that it was your understanding that Roscoe and Mustafa  
7 sent Gwaltney, and you said not Johnson; right? Isn't that  
8 right?

9 A I know that Geezy and Roscoe -- well, Mike Gwaltney told  
10 me. I wasn't there to actually hear or see who sent -- who  
11 sent them. But it was said through Mike Gwaltney through the  
12 vent that -- who sent -- who told him to come rob me, who he  
13 told to come rob me -- who told him to come rob me.

14 Q Sorry, I interrupted you. But you're testifying today  
15 differently than you told the people -- these two prosecutors  
16 on October 17th; is that right?

17 A Not that I recall.

18 Q All right. Is there a document that I could show you  
19 that would refresh your memory?

20 A Sure.

21 MR. O'TOOLE: May I approach, Your Honor?

22 THE COURT: You may approach.

23 MR. MARTINEZ: Can we see what you're going to show  
24 him?

25 MR. O'TOOLE: Sure. Short paragraph.



1 Q (BY MR. ENZINNA) Just read that and look up -- please  
2 read that and look up when you're done.

3 Done? Simple question: When you spoke to the law  
4 enforcement officials on October 17th, you told them that at  
5 that time you thought it was Roscoe and Mustafa who sent  
6 Gwaltney to rob you?

7 A Yeah, and I specifically said too that I knew that Geezy  
8 had something -- I mean, it was Geezy too. The second  
9 sentence also too said that he didn't specifically say his  
10 name, but I could have sworn I thought I said his name.

11 Q But when you talked to the people in October last month,  
12 you specifically said "he did not say Geezy's name"; correct,  
13 isn't that correct?

14 A Yeah.

15 Q All right. Now, you saw -- you had never seen  
16 Mr. Gwaltney before that night you told us; correct?

17 A No, sir.

18 Q And you saw him -- according to your testimony earlier,  
19 you saw him a few days later on the street; right?

20 A Yes, sir.

21 Q All right. And when you saw him, you recognized him as  
22 the person who robbed you at gunpoint; right?

23 A Yeah.

24 Q The person who held a gun to your wife's head and cocked  
25 it; right?

1 A Yes, sir.

2 Q The person who -- the other person held the gun to your  
3 head and cocked it; right?

4 A Yes, sir.

5 Q And then he took your money; right?

6 A Yes, sir.

7 Q And he took your drugs; right?

8 A Yes, sir.

9 Q That really made you mad; right?

10 A Yes. Yes, sir.

11 Q Of course. So where was it that you saw Mr. Gwaltney,  
12 was it the next day?

13 A Yeah, it was -- it was exactly next day.

14 Q All right. And you saw him and you walked up to him and  
15 he walked up to you and you put a gun up to his head about  
16 three feet away and pulled the trigger, aiming your gun at his  
17 head, didn't you?

18 A No.

19 Q You didn't?

20 A I was standing on the steps.

21 Q All right. How far away were you?

22 A I don't know -- I don't know the distance, but it was  
23 quite distance from the steps when I showed on the picture.

24 Q All right. And when you pointed the gun at his head and  
25 you pulled the trigger and the gun didn't work; right?

1 A No, I pointed it at him.

2 Q Right. And then you pulled the trigger?

3 A No, I ran.

4 Q Would it surprise you to know that Mr. Gwaltney will  
5 testify in this trial that when you pointed the gun to him,  
6 three feet from his head, you pulled the trigger and he heard  
7 the click, would that surprise you?

8 MS. HOFFMAN: Objection.

9 THE COURT: You may approach.

10 (Bench conference on the record.)

11 THE COURT: You can't ask a question that way,  
12 suppose they don't call Gwaltney. You can ask the question,  
13 but not that way.

14 MR. O'TOOLE: I'll rephrase it.

15 THE COURT: You can't predict the future.

16 MR. O'TOOLE: I'll be happy to rephrase it.

17 THE COURT: Thank you.

18 (The following proceedings were had in open court.)

19 Q (BY MR. O'TOOLE) Mr. Davis, Mr. Gwaltney hasn't  
20 testified, so I'm going to ask you the question a different  
21 way.

22 Would it surprise you if Mr. Gwaltney's story of that  
23 event is that you pointed the gun right at him at close range,  
24 clicked the trigger, and the gun misfired and then after that,  
25 you ran away and after that, he tried to shoot you, but he

1 couldn't get his gun out fast enough; isn't that correct?

2 A No, I never pulled the trigger.

3 Q Okay. All right. Now, at the time that you're talking  
4 about when you were robbed and selling drugs and on the street  
5 in the Greenmount area, you knew Mr. Johnson; correct?

6 A Yes, sir.

7 Q You knew of him, he was a big personality in the  
8 neighborhood, wasn't he?

9 A I knew of him, I knew him he used to be --

10 Q Right. He was a big personality in the neighborhood,  
11 wasn't he? He was popular, he was a popular guy.

12 A Yes, I guess. Yeah.

13 Q And he was a big man, is a big man, tall; correct?

14 A Yeah.

15 Q Mr. Johnson, could you stand up.

16 Mr. Davis, I'm six-feet-one, so he looks like a big man  
17 to you; correct?

18 A Yeah.

19 Q So in the neighborhood he was hard to miss, wasn't he?

20 A I would say so, I would assume.

21 Q You saw him in the neighborhood; right?

22 A Yeah.

23 Q Did you ever see him on videos?

24 A What you mean videos?

25 Q Did you ever see -- on social media see a video of

1 Mr. Johnson?

2 A Social media, not that I recall. No.

3 Q Okay. Did you ever go to one of the parties that he  
4 promoted?

5 A No.

6 Q All right. If I told you that he promoted parties and  
7 sold tickets for these parties, would that remind -- would  
8 that remind you that perhaps --

9 A I never seen him.

10 Q You never saw parties?

11 A No. I ain't never seen him promote no parties or  
12 nothing.

13 Q All right. But you knew him in the neighborhood, didn't  
14 you?

15 A Yeah.

16 Q All right. And you knew -- you could tell from what you  
17 saw that people liked him; right?

18 A I -- not the people that was around me.

19 Q All right. Well, so you don't think that he had a -- he  
20 wasn't a big person in the neighborhood that people knew and  
21 liked, is that your testimony?

22 A I can't -- say that again?

23 Q So you're saying that you don't think that he was a big  
24 personality in the neighborhood who people liked?

25 A Not the people around me, they didn't like him.

1 Q All right. But you knew other people liked him; right?

2 A Not that I know of.

3 Q So you didn't know of anybody who liked Mr. Johnson;  
4 correct?

5 A Not --

6 Q Nobody -- nobody?

7 A Not that I know of.

8 Q So in all the times you were around, you never saw a  
9 single person who thought -- who you could see liked  
10 Mr. Johnson?

11 A The people that was around him, the little --

12 Q All right. And you didn't see any of his parties?

13 A Huh?

14 Q You didn't go to any of his parties, so you don't know  
15 about that?

16 A No.

17 Q All right. Let me ask you about the time that you shot  
18 Mr. Johnson.

19 All right. You knew after you were robbed that -- and  
20 you pointed the gun at Mr. Gwaltney, you knew that you were  
21 going to be talked about in the neighborhood; correct?

22 A I knew I was going to be talked about?

23 Q Yeah; right?

24 A Not really, because I try to hide my face.

25 Q I see.

1 A Try to be unknown.

2 Q I see. So there came a time that you decided that you  
3 were going to get back at whoever robbed you; correct?

4 A Yes, sir.

5 Q Did you try to find Mr. Gwaltney to get back at him?

6 A Not really. I just was in the same neighborhood  
7 basically because I knew that Geezy and them has -- they was  
8 all together. I knew all of them was together.

9 Q So you decided to go and shoot Geezy; right?

10 A Hmm.

11 Q All right. So you go to shoot Geezy and you see him and  
12 he puts out his hand and says, "how you doing, and you know I  
13 didn't have anything to do with that robbery of you," he did  
14 that; right?

15 A Not that I recall.

16 Q He never shook your hand and said I had nothing to do  
17 with the robbery?

18 A Not that I recall.

19 Q Court's indulgence.

20 A He shook my hand when we was in -- when I stated earlier  
21 we was in the building.

22 Q Right.

23 A With me him and his brother and he was like -- he was  
24 like, you know who robbed you? And I looked at him, I knew  
25 who robbed me, and I knew who had something to do with it.

1 Q I'm sorry, would you say that name again, you knew who?

2 A Yeah, I knew who robbed me.

3 THE COURT: I knew who robbed me.

4 MR. O'TOOLE: Who robbed me, I'm sorry. Thank you.

5 A I knew who robbed me. At the time I didn't, when it  
6 first happened, until I seen the Facebook. I knew who robbed  
7 me, but I wasn't telling him that I knew who robbed me because  
8 I know the games they play. It's like they will like try to  
9 rock you to sleep. Rock to sleep meaning that they would try  
10 to befriend you and then take your life away from you.

11 Q (BY MR. O'TOOLE) Okay. So you could tell, from what you  
12 knew in the community, that he was trying to rock you to  
13 sleep?

14 A Yeah.

15 Q So when he told you and -- tried to shake your hand and  
16 told you he didn't do it, he was --

17 A Him and his brother.

18 Q He was rocking you to sleep?

19 A Yeah.

20 Q But he denied being involved in it, didn't he?

21 A Yeah.

22 Q All right. So you didn't believe that then, did you?

23 A No, because I knew for a fact. I knew.

24 Q Is that when you shot him or did you shoot him later?

25 A What you mean?



1 Q When did you shoot him, right after he told you he didn't  
2 do it or did you wait a little bit?

3 A It was probably like the next couple days, probably like  
4 a day or two.

5 Q All right. The next couple days you went up and you had  
6 a gun?

7 A Yes.

8 Q And where did you shoot him, where on his body?

9 A I just put the gun up and shot him.

10 Q How many times did you shoot?

11 A Like seven times.

12 Q How many times did you hit him?

13 A I don't even know.

14 Q You were trying to kill him; right?

15 A My -- my motto was, when I first stated on the stand, was  
16 like I was going to get them before they get me.

17 Q You were trying to kill him; right?

18 A Yeah.

19 Q Did you ever get charged with that shooting?

20 A No.

21 Q So you shot somebody, trying to kill them, and you never  
22 got charged; correct?

23 A No.

24 Q And you told the government about your shooting  
25 Mr. Johnson and trying to kill him, you told them that;

1 right?

2 A Yeah.

3 Q And part of your agreement is that whatever you tell  
4 them, you don't get charged with if you cooperate; correct?

5 MS. HOFFMAN: Objection.

6 MR. O'TOOLE: I'll rephrase it.

7 THE COURT: Rephrase the question.

8 Q (BY MR. O'TOOLE) Your understanding was that as part of  
9 the deal to cooperate, this particular charge was not going to  
10 be -- this particular shooting, attempted murder, was not  
11 going to be charged against you; correct?

12 MS. HOFFMAN: Objection.

13 THE COURT: Well, let's approach.

14 (Bench conference on the record.)

15 THE COURT: So does the defendant's plea agreement  
16 give him immunity for the shooting of Mr. Johnson?

17 MS. HOFFMAN: No.

18 THE COURT: Mr. O'Toole, you've seen the plea  
19 agreement.

20 MR. O'TOOLE: I've seen the plea agreement. It  
21 doesn't state this particular charge, but it's clear he's not  
22 being charged with anything further if he tells the truth.

23 THE COURT: That wasn't the question.

24 MS. HOFFMAN: That's not true.

25 THE COURT: Well, you're saying that's also not

1 what's in the plea agreement?

2 MS. HOFFMAN: All the plea agreement says is that if  
3 he's truthful we can't use what he tells us against him.

4 MR. O'TOOLE: I think we're splitting hairs, but  
5 I'll be happy to rephrase the question.

6 MS. HOFFMAN: I think it's a very important  
7 distinction.

8 MR. MARTINEZ: I can say it precisely. There's a  
9 standard immunity provision in the sealed supplement that goes  
10 a step beyond what is typically in a proffer --

11 MS. HOFFMAN: -- a piece.

12 MR. MARTINEZ: -- proffer letters, if an individual  
13 comes in and proffers after the cooperation agreement, we give  
14 him use immunity, but we say we can use it derivatively. The  
15 standard sealed supplement goes a bit further and gives them  
16 use and derivative use immunity, but does not go all the way  
17 to transactional immunity. So that is what is given to a  
18 defendant who cooperates and continues to abide by the terms  
19 of their agreement and is truthful.

20 MR. O'TOOLE: Well, I'll ask him that question --

21 THE COURT: The objection is sustained with respect  
22 to whether or not he has immunity for this particular  
23 shooting.

24 MR. O'TOOLE: Right.

25 THE COURT: That doesn't mean that you can't inquire

1 about the scope of the immunity that he has under the terms of  
2 the plea agreement. And as Mr. Martinez described it, that  
3 sounds like a correct description of what is absolutely the  
4 standard District of Maryland plea agreement.

5 MR. O'TOOLE: Right. And if I state it just like  
6 that, we'll be here until 4:00 o'clock in the afternoon on  
7 that question.

8 THE COURT: Well, that may be the case. But  
9 regardless, you're not permitted to imply an answer to a  
10 question that by virtue of what has been produced to you in  
11 discovery, you know is not true. Evidently, that's why I  
12 wanted you up at the bench. I wanted to know, does he have a  
13 specific grant of immunity with respect to the shooting of  
14 Gerald Johnson?

15 MR. O'TOOLE: No, sir.

16 THE COURT: And both sides agree that he doesn't, so  
17 that can't be the premise of the question.

18 MR. O'TOOLE: All right. Thank you.

19 (The following proceedings were had in open court.)

20 THE COURT: Sustained. Next question.

21 Q (BY MR. O'TOOLE) Mr. Davis, when you spoke to the  
22 government, you told them all about your shooting of  
23 Mr. Johnson and trying to kill him; right?

24 A Yes, I told them about it.

25 Q And you were not charged with it; correct?

1 A No.

2 Q Okay. Let me ask you, do you -- have you become friends  
3 with Mr. Gwaltney?

4 A Have I --

5 THE COURT: Become friends with who?

6 Q (BY MR. O'TOOLE) Mr. Gwaltney, Gwaltney.

7 A Have become friends -- I wouldn't say we friends, but I  
8 socialize -- I talk to him.

9 Q How often do you talk to him?

10 A I just talk to him when I was up Supermax.

11 Q How long ago was that?

12 A Like a year ago.

13 Q And do you communicate with him now through anybody  
14 else?

15 A No, sir.

16 Q So the last time you spoke to Mr. Gwaltney was about a  
17 year ago?

18 A Yeah.

19 Q Okay. And you were in Supermax together, did you talk  
20 about your cooperation in this case a year ago?

21 A No.

22 Q All right. Did you talk about any of his cases where  
23 he's going to cooperate?

24 A No.

25 Q All right. Did you talk about your plea agreement?

1 A No.

2 Q Did you talk about what you hoped your sentence was going  
3 to be in your case?

4 A No.

5 Q When you were in Supermax, had you already pled guilty or  
6 had you not pled guilty yet?

7 A Did I plead guilty --

8 Q This is back on Halloween of last year you pled guilty.

9 A Yeah, I pled guilty already. When I was at Supermax, I  
10 pled guilty.

11 Q So when you talked to him, you had already pled guilty;  
12 right? And you were --

13 A I talked to him before I pled guilty.

14 Q Okay. Did you talk to him again after you pled guilty?

15 A I don't think I talked to him after I pled guilty.

16 Q Okay. Before you pled guilty, you talked to him and you  
17 told him you were going to cooperate?

18 A No, I never told him I was going to cooperate.

19 Q Never told him that?

20 A No.

21 Q Who have you talked about -- who have you talked to about  
22 your cooperation with the United States?

23 A Nobody.

24 Q Nobody. Not your wife?

25 A Hmm --

1 MS. HOFFMAN: Objection.

2 THE COURT: Sustained.

3 Q (BY MR. O'TOOLE) So your answer is, you've spoken to  
4 nobody outside of law enforcement about your plea agreement?

5 A No.

6 Q All right. Who is Michael Gray?

7 A Who is Michael Gray?

8 Q Right.

9 A I heard about him. I don't know --

10 Q You know that he was a BGF member; correct?

11 A I heard about him.

12 Q All right. You heard about him because you heard that he  
13 was a BGF member?

14 A I heard that he testified against some people.

15 Q All right. You heard that he was a cooperating witness,  
16 like you are; correct?

17 A Yeah.

18 Q All right. Have you ever met Mr. Gray?

19 A No, sir.

20 Q Now, you know that Mr. Gwaltney knows Mr. Gray, don't  
21 you?

22 A Not that I know of.

23 Q All right. But the government, the U.S. Attorney's  
24 Office asked you if you knew Mr. Gray, didn't they?

25 A Yes, sir.

1 Q All right. You talked to government, didn't you, about  
2 the shooting of Mr. Henry Mills?

3 A Who?

4 Q Henry Mills.

5 MS. HOFFMAN: Objection.

6 THE COURT: You may approach.

7 (Bench conference on the record.)

8 MS. HOFFMAN: Your Honor, I apologize, I thought you  
9 were asking about what he testified about on direct. If  
10 you're asking about what we talked about in interviews, I  
11 withdraw it.

12 THE COURT: All right. So it was a -- all right.  
13 So you withdraw the objection?

14 MS. HOFFMAN: Yeah.

15 THE COURT: How much more have you got?

16 MR. O'TOOLE: I think quite a bit.

17 THE COURT: Okay. So let's take the lunch break  
18 now. And remember, we have to go till 3:00 o'clock. So  
19 logical point to break or is there --

20 MR. O'TOOLE: No, I think so. I've confused him. I  
21 can confuse him later. I've confused him now.

22 THE COURT: All right. We'll take the break.

23 (The following proceedings were had in open court.)

24 THE COURT: Mr. Davis, you may step down and go with  
25 the Marshal.



1 THE COURT: Ladies and gentlemen, it's time for us  
2 to stop and take our lunch break. During the lunch break do  
3 not discuss the case with anyone. Do not discuss the case  
4 even among yourselves. You must wait until after you've heard  
5 all the evidence, the closing arguments, and my instructions  
6 as to the law. Do not allow yourselves to be exposed to any  
7 news articles or reports that touch upon the case or the  
8 issues it presents or any articles or reports that relate to  
9 any of the participants in the case. Avoid all contact with  
10 any of the participants in the trial. Do not make any  
11 independent investigation of the law or the facts of the case.  
12 Do not look up anything on the internet. Do not consult an  
13 encyclopedia or dictionary.

14 Ladies and gentlemen, you'll remember that today we  
15 have to take a break all the way until 3:00 o'clock. You're  
16 excused until 3:00 o'clock. Please take the jury out.

17 (Jury left the courtroom.)

18 THE COURT: So Mr. O'Toole, about how much longer do  
19 you think?

20 MR. O'TOOLE: 20, 25 minutes.

21 THE COURT: 20, 25 minutes. Let's see, Mr. Bussard,  
22 are you going to have anything?

23 MR. BUSSARD: No, Your Honor.

24 THE COURT: Mr. Francomano.

25 MR. FRANCOMANO: Not very much.

1 THE COURT: Mr. Francomano, you have a sentencing in  
2 this building?

3 MR. FRANCOMANO: I do.

4 THE COURT: Okay. Mr. Martinez, what's up for the  
5 rest of the afternoon?

6 MR. MARTINEZ: Well, after Mr. Davis we have a  
7 lengthy witness lined up who's related to the testimony that's  
8 being given.

9 THE COURT: Okay.

10 MR. MARTINEZ: And then we had a sergeant testify --  
11 or scheduled to testify after that witness. But based on  
12 Mr. O'Toole's proffer and the Court's timing, I think we're  
13 going to excuse that person. I think it's safe to assume --

14 THE COURT: You're never going to get to him today.  
15 Okay. 3:00 o'clock. Defendants are remanded until then.

16 (A recess was taken.)

17 THE COURT: Matter to take up before the jury?

18 MR. MARTINEZ: Yes, Your Honor.

19 THE COURT: Be seated, please.

20 MR. MARTINEZ: During the break Mr. O'Toole and  
21 Mr. Enzinna approached us to ask about playing portions of the  
22 "Welcome Home" rap video while Mr. Davis is on  
23 cross-examination. And some of the portions they want us to  
24 play include portions they previously raised objections to.  
25 This is the video -- the eight-minute video we played during

1 the pretrial conference.

2 THE COURT: That's fine. They can put anything on  
3 they want.

4 MR. MARTINEZ: I understand that.

5 THE COURT: Within reason and the door swings  
6 open.

7 MR. MARTINEZ: And that's why I wanted to raise the  
8 issue.

9 THE COURT: Whatever the defendant chooses to put in  
10 evidence, provided that there is a legal basis for it coming  
11 in and no objection that is sustained, will be in evidence.  
12 And then once it's in evidence, it's evidence. Evidence  
13 doesn't come in for one side or the other, it's either in or  
14 it's out.

15 MR. MARTINEZ: Right. And so the discussion we were  
16 having, just to be fair to Mr. Enzinna and Mr. O'Toole, they  
17 were asking us, well, we previously raised an objection to  
18 these first nine seconds because there's the sound of machine  
19 guns and credits from other people, et cetera, so we had  
20 edited that clip out of the version we were going to play. We  
21 still have the unedited clip. They want us to play the  
22 unedited nine seconds, and so we just wanted to raise that  
23 with the Court because --

24 THE COURT: Play the unedited nine seconds of what?

25 MR. MARTINEZ: Of the beginning of the video.

1 MS. HOFFMAN: The first nine seconds.

2 MR. O'TOOLE: The beginning of the video and then  
3 just play the rest of it as the government has edited out, as  
4 you directed.

5 MR. MARTINEZ: So I don't know how this works --

6 THE COURT: Well, how are you going to do that?  
7 You've got to have a physical exhibit that comes into the  
8 record of this case. Now, I assume that what the government  
9 has is an appropriately edited disk --

10 MR. MARTINEZ: Correct.

11 THE COURT: -- that shows only those segments that  
12 are previously ruled admissible.

13 MR. MARTINEZ: And that has come in as CD 9.

14 THE COURT: Okay. If you have a little additional  
15 segment that you want to play, that can -- that's fine, but  
16 it's got to be physically discrete. It can't be some part of  
17 some other disk because -- that has portions on it that are  
18 not admissible.

19 MR. O'TOOLE: If -- and that's something we probably  
20 cannot do with the Court's schedule now, of course, but could  
21 we do this: To play the first nine seconds as  
22 Defense Exhibit No. 1 and then simply go into the remaining of  
23 the exhibit that the government has edited, so that we have --  
24 we have one document and we're going to -- we have the  
25 complete -- makes it look like a video and here it is.

1 Otherwise -- otherwise, we think that -- and we don't think  
2 we're opening up any door to other people speaking. There's  
3 nobody speaking in this first nine seconds.

4 So that in -- outside the Court's hearing, we could  
5 get an exhibit that is nine seconds, which will be  
6 Defense Exhibit No. 1, and then Government's DC9 (sic) would  
7 be followed immediately in front of the jury so that it's not  
8 uncomfortable for anybody to wait and see different things. I  
9 realize this is not the best way to do it, Your Honor, but  
10 it's the best we have at this moment.

11 THE COURT: What would the record consist of after I  
12 granted your request? It would consist of the totality of the  
13 government's evidence, which is already in evidence, which is  
14 Exhibit No. --

15 MR. MARTINEZ: CD 9.

16 THE COURT: CD 9. And then there would be -- having  
17 been played in front of the jury, some audio and video, but we  
18 don't have that memorialized physically, we don't have that  
19 thing. We just have had an experience in front of the jury  
20 that the record doesn't properly reflect.

21 MR. O'TOOLE: With the representation that by  
22 tomorrow morning we will have that exact nine seconds to be  
23 put into the record as Defense Exhibit No. 1, which is the  
24 first -- which are the -- we're putting back into the video  
25 what was there before it was taken out. We didn't plan to do

1 this today, Your Honor. Now that we find out that the first  
2 part's taken out, we just ask the Court to allow us to put the  
3 first nine seconds in front of Government's Exhibit DC9 (sic)  
4 and play it, and then tomorrow morning we'll have a disk that  
5 includes 9 seconds, which is Defense Exhibit No. 1.

6 THE COURT: Well, is that technologically feasible  
7 that the disk can be made that records the audio and video  
8 that is the first nine seconds of the other exhibit?

9 MR. O'TOOLE: Your Honor, that's -- my hope is that  
10 Damon is --

11 MR. MARTINEZ: I --

12 MR. O'TOOLE: Or we can do it --

13 MR. MARTINEZ: There is a CJA paralegal.

14 MR. O'TOOLE: I was just told that we can --

15 THE COURT: What's the government's position?

16 MR. MARTINEZ: I share the Court's concerns. I  
17 mean, my questions were, once we get into picking and choosing  
18 which portions come in and which don't, after we've litigated  
19 this fully and the Court has already ruled, it gets a little  
20 messy. But also, the questions the Court raises about what  
21 the record consists of are good ones. If the Court's  
22 satisfied that defense counsel can create a disk that just  
23 contains the first nine seconds and submit it --

24 THE COURT: Am I satisfied? I'm satisfied legally  
25 that they can do that. I don't think there's a thing in the

1 world wrong with defense counsel changing their position in  
2 light of how the testimony actually got presented at trial.  
3 That's the nature of how criminal defense work goes and what  
4 it's allowed to do. I don't have the slightest concern about  
5 that. I solely have a concern about how we actually  
6 accomplish this in a way that allows me to discharge one of my  
7 fundamental responsibilities, which is to make sure that I  
8 assemble a coherent cogent record of what happened here.  
9 That's what I'm worried about, mechanics.

10 MR. O'TOOLE: Here's what I think I need to add to  
11 this conversation, if I could. We asked -- Mr. Enzinna asked  
12 that portions of the video be taken out, which were the  
13 incendiary parts of people sticking their heads in --  
14 Mr. Enzinna is talking, go ahead.

15 MR. ENZINNA: Specifically, what we argued in our  
16 motion of limine was that the videos should stay out in their  
17 entirety. One, because they're irrelevant; two, because their  
18 prejudicial impact outweighs their relevance. Then the third  
19 piece of the argument was that the videos contained hearsay.  
20 And we lost on the first two pieces of that, but won on the  
21 third. The judge, the Court said the government has to edit  
22 out the hearsay.

23 Now, the nine seconds we're talking about today is  
24 not hearsay. The nine seconds we're talking about is  
25 production of the video. It's credits, it's music, it's not

1 anybody talking, so we're not changing our position.

2 THE COURT: No, that's fine. And I'm not contending  
3 that you are. But you know, the government edited their  
4 exhibit and then they took out even more. It's still their  
5 case and their exhibit. They can take out as much as they  
6 want, so there's no fault on the part of the government here.  
7 All I'm saying is that if the defense wants to put in an  
8 exhibit, you've got to have it in some form or format where it  
9 is susceptible to becoming a part of the record of this case.

10 And at the moment we don't have that. And I'm a  
11 little reluctant to put something in front of jury that  
12 without certainty that I will have the record to back it up.  
13 And I haven't heard enough about what the plan is to ensure  
14 that. You know, this is -- this is a genie that doesn't go  
15 back in the bottle. Once it's played, it's a part of the  
16 record. You might say, well, we don't have any concerns about  
17 that, we want it played. Well, I have a concern about it  
18 because the Court has its own responsibilities here and that  
19 is to make sure that the record that's assembled here actually  
20 is accurate in terms of what happened in the trial over which  
21 I presided. And I take that duty seriously.

22 MR. O'TOOLE: There's no question about that and we  
23 do too. What I think that -- and I'll stop talking after  
24 this, but I think what we have here is, you have seen the  
25 first part of this video. All it is is the opening part.



1 You've seen it. And you ordered that the government take out  
2 parts of hearsay that we talked about. And they took out the  
3 first part and we didn't expect that to come out. All we're  
4 asking -- you know what it is and we know all what it is. Our  
5 technical person here says that she can have tomorrow morning  
6 a disk with the first nine seconds of it.

7 THE COURT: And she's going to make that from disks  
8 that you already have that were already produced to you or  
9 what?

10 MR. O'TOOLE: Yeah, we've got whole videos --

11 THE COURT: Are you dependant upon the government at  
12 all to create this hard copy of the exhibit?

13 MR. O'TOOLE: Not at all. No dependency at all on  
14 the government. And the government can do today what I'm  
15 asking, which is to play the first nine seconds of the video.  
16 I can produce that as a combination of --

17 THE COURT: How are they going to play the first  
18 nine seconds? They'll play the first nine seconds and then  
19 stop and then they will switch disks.

20 MR. MARTINEZ: I think that is what -- logistically,  
21 that's how it's going to have to work. We have one unabridged  
22 file. We would play the first nine seconds of that. And just  
23 for the record, that's the portion that contains all of the  
24 gunshots that were objected to during the pretrial conference.  
25 I know now it's being characterized as just an argument about

1 hearsay. But remember, we had the whole conversation about  
2 the production effects and the gun sounds.

3 THE COURT: Well, that part of it was thought to be  
4 inflammatory and violative of Rule 403. But as Mr. Enzinna  
5 correctly notes, he lost on that.

6 MR. MARTINEZ: So we would play one file, and then  
7 after nine seconds we would switch back to the edited version  
8 that's on CD 9.

9 MS. HOFFMAN: And I mean, technically, what I'm -- I  
10 have copied the exhibits onto my desktop and that's what I  
11 will literally be playing from.

12 THE COURT: All right. Well, let's have a dry run.  
13 Show me that this can be done without the jury in the  
14 courtroom.

15 MR. O'TOOLE: Your Honor, thank you for your  
16 patience here.

17 THE COURT: Are we going to play the whole video as  
18 part of the cross-examination; is that it?

19 MR. O'TOOLE: Yes, and it's shorter now, it's  
20 shorter than it was.

21 THE COURT: Inevitably there's a gap. They're going  
22 to have to stop, reload.

23 MR. O'TOOLE: I don't think it will be very long. I  
24 think Christina -- Ms. Hoffman now has it on --

25 THE COURT: Yeah, but as soon as the first nine

1 seconds is finished on the complete disk, you're going to stop  
2 playing that disk and you're going to remove that disk and not  
3 play anymore from that disk for the danger that you might  
4 accidentally play a portion of that disk that the Court's  
5 ruled inadmissible.

6 MS. HOFFMAN: That's right, except that I'm not  
7 playing it from a disk, I'm playing it from my desktop. So  
8 I'll hit pause and then I'll go into the other folder that has  
9 the contents of CD 9 and then play the edited version.

10 THE COURT: Is that acceptable to you, Mr. O'Toole?

11 MR. O'TOOLE: It is. It is acceptable. And I trust  
12 the government to do the very best it's possible to do. So I  
13 don't have a problem with that. The problem I have now is how  
14 do I ask -- how will I introduce this hybrid exhibit.

15 THE COURT: This is not good practice. I'm not  
16 saying we're not going to do it. But this is not good  
17 practice because now you're dependant upon Ms. Hoffman's  
18 technical abilities, suppose she fouled up. How soon do we  
19 get to a inadmissible portion on the full disk, is there any  
20 of that that comes very quickly?

21 MS. HOFFMAN: Well, we can do a dry run right now.

22 THE COURT: Show me not the first nine seconds, but  
23 show me about the first 30 seconds, so I know that if we have  
24 some kind of a technological glitch in here and a run away  
25 computer, that I don't end up with some kind of contamination

1 of this jury three weeks into this trial. It's no way to run  
2 the railroad.

3 (Video played.)

4 THE COURT: All right. So how many seconds did we  
5 play there?

6 MS. HOFFMAN: 30.

7 THE COURT: Mr. O'Toole, do you agree in that first  
8 30-second segment there was nothing that appeared there that  
9 is subject to the Court's earlier order of exclusion?

10 MR. O'TOOLE: It is. In fact, I would ask for that  
11 30 seconds to be put in, just use that 30 seconds.

12 THE COURT: Well --

13 MR. O'TOOLE: I know what you're going to say now,  
14 it's obvious. We're pretty close to pulling this  
15 altogether.

16 THE COURT: We're going to play nine seconds. That  
17 was the proposal.

18 MR. O'TOOLE: Your Honor, I'm told that our  
19 technical person can have a disk, the first 30 seconds of --  
20 including -- included onto the government's thing. So I know  
21 it can be a problem with either relying on the government or  
22 not having an exhibit number. We were going to have a disk  
23 that has it on.

24 THE COURT: How soon is she going to have the first  
25 30 seconds ready to play?

1 MR. O'TOOLE: I think she's doing it right this  
2 second.

3 THE COURT: So then you would ask for two different  
4 exhibits -- first of all, how are you going to mark this  
5 exhibit?

6 MR. O'TOOLE: Well, if we do get the government's  
7 revised edition with our 30 seconds in the front of it, I'm  
8 going to introduce it as Defense Exhibit No. 1.

9 THE COURT: Johnson Exhibit No. 1, Ms. Powell, is  
10 that the right number?

11 THE CLERK: Yes, as of right now Mr. Johnson does  
12 not have any exhibits.

13 THE COURT: All right. So this will be  
14 Johnson Exhibit No. 1 and --

15 MR. O'TOOLE: Your Honor, if we cannot do it in the  
16 next two minutes, we'll pull the idea.

17 THE COURT: If you can't do it in the next two  
18 minutes, you'll pull the idea. I have witnesses, Mr. O'Toole.

19 MR. O'TOOLE: Are you asking for witnesses?

20 THE COURT: No, I said I already have them.

21 MR. O'TOOLE: Oh, you have witnesses.

22 THE COURT: The clock is ticking.

23 MR. O'TOOLE: Your Honor, you've been in enough  
24 trials, some things don't always go as smoothly as you would  
25 like them to. It just doesn't happen.

1 THE COURT: Without a doubt. And I'm trying to  
2 accommodate you here, but I've got to make a record.

3 MR. O'TOOLE: You certainly are. All right. Here's  
4 the latest: Before the two minutes goes, I want to stop the  
5 clock for a second. We cannot have the disk in our hand until  
6 about an hour from now. However, we can play it from our  
7 system as we discussed before, the first 30 seconds and then  
8 the government's revised version. If that's not agreeable to  
9 the Court, then we'll do it later with some other witness.  
10 It's not a problem.

11 THE COURT: Well, the last statement is very  
12 inviting. It's not a problem and you'll do it with a later  
13 witness, then why don't we do it that way? If it's not  
14 critical that it be done during this particular examination,  
15 yes, I'd like to stop delaying the jury and get them in here  
16 and get going.

17 MR. O'TOOLE: Very well.

18 THE COURT: But --

19 MR. O'TOOLE: I've got time to spare, I'm going to  
20 use this with some other argument.

21 THE COURT: Okay. Well, I'm not cutting you off,  
22 Mr. O'Toole, if you want to do it with this witness, I'm  
23 trying to find a way to do it. But if you're telling me that  
24 it's of equal value and significance to the defense if you do  
25 it at some other time when you've got the exhibit in a more

1 proper form, then of course I would prefer to do it that way.

2 But what are you asking me?

3 MR. O'TOOLE: I'm not asking you anything,  
4 Your Honor. I'm telling you we're pulling the idea for now  
5 and I'll proceed with Mr. Davis as we were.

6 THE COURT: Let's bring Mr. Davis into the courtroom  
7 and bring the jury in and let's go.

8 (Jury entered the courtroom.)

9 THE COURT: Be seated, please. Mr. Davis, you  
10 remain under oath.

11 Mr. O'Toole, you may continue your  
12 cross-examination.

13 MR. O'TOOLE: Thank you, sir.

14 CROSS-EXAMINATION (Cont'd)

15 BY MR. O'TOOLE:

16 Q Mr. Davis, good afternoon.

17 A Good afternoon.

18 Q Mr. Davis, before the lunch break we started talking  
19 about a gentleman by the name of Henry Miller -- Henry Mills,  
20 whose full name is Dominique Henry Mills, he's also known as  
21 Nique. Do you know that person?

22 A He's also known as who?

23 Q Nique.

24 A Nique?

25 Q Yeah.

1 A (No verbal response.)

2 Q Let me ask you this: Did you talk to the government  
3 lawyers and the law enforcement on November 30th, 2016 just  
4 after your plea agreement on the 31st of October of last year,  
5 do you remember talking to the -- to these prosecutors and  
6 some other law enforcement officials?

7 A Yes.

8 Q All right. And do you have a friend -- do you remember  
9 talking about a friend of yours by the name of Michelle, who  
10 had a brother Nique, who had been killed?

11 A Yeah.

12 Q Okay. And you remember, don't you, that David Hunter,  
13 who we know as Lil' Dave --

14 A Yes.

15 Q -- was charged with that murder and went on to be  
16 convicted in court of that murder, do you remember that?

17 A Yes.

18 Q You're aware of that, aren't you?

19 A Yes.

20 Q Did you form an understanding or a belief that somebody  
21 else was the perpetrator of the murder in that case beside  
22 Mr. Hunter?

23 A Yes.

24 Q Could you tell the jury about that, please and how you  
25 formed that opinion of yourself -- that belief?



1 A It was TJ and a guy named D, because after it happened  
2 they had came -- they tried to come to my house. I was living  
3 on Aisquith and Bonaparte at the time. And they got in my car  
4 and we drove up Druid Hill Park and we smoked a blunt and they  
5 was telling me about what happened.

6 Q What did they tell you?

7 A They told me they seen a dude come down near Greenmount  
8 and they followed him up Greenmount. And they -- he say he  
9 was trying to rush and hurry up to get to the house get his  
10 gun or something, and they caught him before he got to his  
11 sister Michelle house. And said -- they said they ran him  
12 down and shot him or something, shot him, killed him.

13 Q And that was the killing -- was it your understanding  
14 that was the killing of Mills, whose name is Nique?

15 A Yes.

16 Q All right. And the same -- the same killing that was  
17 charged on Mr. Hunter?

18 A Yes.

19 Q Lil' Dave. Did you ever have a conversation with anybody  
20 who was in the BGF about whether the person who did that  
21 murder would actually let Hunter take the rap for a murder  
22 that somebody else did?

23 A Did I actually have -- I didn't actually have a  
24 conversation about anybody taking a rap about the situation,  
25 but we talked -- it was like they talked about it.

1 Q What did you talk about?

2 A It was like -- they was -- it was saying like he wasn't  
3 the one who actually pulled the trigger. I mean, he was  
4 present, but he wasn't actually the one who killed the dude  
5 Nique. It was supposed to been somebody else.

6 Q So you told the government, the law enforcement, that  
7 based on what you heard from these two people, that they had  
8 the wrong person?

9 A Yes.

10 Q Right. And Mr. Hunter was not the person who did the  
11 killing?

12 A From -- to my understanding, that was told to me.

13 Q Okay.

14 MR. O'TOOLE: Your Honor, I think that's all I have  
15 of Mr. Davis. I thank the Court.

16 THE COURT: Mr. Bussard.

17 MR. BUSSARD: No, thank you.

18 THE COURT: Mr. Francomano.

19 MS. HOFFMAN: Your Honor, may we approach?

20 THE COURT: Yes.

21 (Bench conference on the record.)

22 THE COURT: Over by the microphone please,  
23 Ms. Hoffman.

24 MR. MARTINEZ: Your Honor, I wanted to raise a  
25 concern about that last line of questioning. We didn't object

1 contemporaneously to the questions, we were thinking about  
2 objecting on hearsay grounds. But the gist of that was  
3 clearly to put before the jury that he had heard information  
4 implicating somebody other than Hunter. And to suggest that  
5 he told us and that we didn't want to hear and we went ahead  
6 with our theory. And all of us know that David Hunter stood  
7 up in this court and admitted to having killed Henry Mills.

8 And what I'm wondering is, if leaving that  
9 suggestion hanging or by pursuing that questioning of  
10 Mr. Davis, saying, well, you came in and you told them the  
11 truth, the government had their theory and they just didn't  
12 want to hear it, at what point does that open the door to the  
13 jury being entitled to know that David Hunter saw who did it?

14 MR. O'TOOLE: In what form do we hear --

15 THE COURT: Why wouldn't the jury be entitled to  
16 hear David Hunter say that he did it?

17 MR. MARTINEZ: Well, in the form of admitting in his  
18 plea agreement, that's what I'm wondering.

19 THE COURT: Well, that's a different question.  
20 That's hearsay.

21 MR. MARTINEZ: So is what came out.

22 THE COURT: You didn't object. Failing to object on  
23 one hearsay doesn't empower a party to thereafter admit other  
24 hearsay. But if there's a question as to the relevancy of  
25 whether or not David Hunter admitted killing Mr. Mills,

1 there's no question whatsoever, it's highly relevant. It's  
2 just a question of how are you going to get that evidence  
3 before the jury. Mr. Hunter's testimony might be one avenue.  
4 There might be others.

5 MR. MARTINEZ: Well, we've already heard testimony  
6 to that effect. I'm just -- the line of questioning is  
7 disingenuous because everybody knows he pled. And to sit  
8 there and suggest that we pursued the wrong guy when he was  
9 telling us --

10 THE COURT: I didn't really take it a criticism of  
11 what the government had done, as much as it was a  
12 demonstration of the fact that this particular witness might  
13 be well-possessed of incorrect information. It might -- who  
14 knows how the defense might want to argue this. They might  
15 want to argue: This, ladies and gentlemen, everybody knows  
16 David Hunter committed that murder, except apparently  
17 Mr. Jackson (sic), what does that tell us about him? I mean,  
18 there are a lot of different ways this could be of utility to  
19 the defense that are not in the category that you're  
20 describing, which was that it was some sort of gratuitous  
21 unjustified attempt to discredit the prosecutors. I don't see  
22 it that way.

23 MR. MARTINEZ: Okay.

24 (The following proceedings were had in open court.)

25 THE COURT: Mr. Francomano, cross-examination.

1 MR. FRANCOMANO: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FRANCOMANO:

4 Q Mr. Davis, have you ever heard of the BGF book?

5 A BGF book?

6 Q Yes, sir.

7 A I heard the black -- yeah, I heard of it.

8 Q You heard of the black book?

9 A Yeah.

10 Q Do you know what's in the black book?

11 A I guess stuff about George Jackson, stuff about  
12 George Jackson and the history of stuff.

13 Q Have you ever read the black book or seen it before?

14 A No.

15 Q You've never seen it before?

16 A Huh-uh.

17 Q You don't personally know Mr. McCants; correct?

18 A Mr. McCants?

19 MR. FRANCOMANO: Exactly. Thank you.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MS. HOFFMAN:

23 Q Mr. Davis, we were talking earlier about the murder of  
24 Henry Mills or Nique. Did you see Nique get killed?

25 A No, I didn't actually see him get killed.

1 Q Did you ever talk to any of the eyewitnesses who saw with  
2 their own eyes the murder?

3 A Two of the dudes that was with me say they was present  
4 and there because they try to come to my house after the  
5 situation had occurred.

6 Q Did you ever talk to Sharon Hawkins about the murder?

7 A Sharon Hawkins?

8 Q Do you know who that is?

9 A No. She go by anything else?

10 Q Just Sharon Hawkins, as far as I'm aware.

11 A No.

12 Q Did you ever watch any video footage of the murder?

13 A No, ma'am.

14 Q Is your information about the murder limited to what you  
15 heard from Twin and D?

16 A What you mean limited, you say limited?

17 Q Is the information that you have about the Nique murder,  
18 does it just come from Twin and D?

19 A Basically, yeah. And I know -- well, his sister told me  
20 a little bit about it too because his sister was my friend  
21 Michelle.

22 Q Mr. Davis, you told us earlier that you eventually ended  
23 up joining BGF in 2015; is that right?

24 A Yes, ma'am.

25 Q Is there a chain of command in BGF?

1 A Yes, ma'am.

2 Q And under that chain of command, can senior members of  
3 the gang tell younger members what to do?

4 A Yes, ma'am.

5 Q To give an example, could a senior member of the gang  
6 tell a younger member of the gang to commit a robbery?

7 MR. O'TOOLE: Objection.

8 THE COURT: Basis.

9 MR. O'TOOLE: Beyond the scope.

10 THE COURT: Overruled.

11 Q (BY MS. HOFFMAN) Could a senior member of the gang tell  
12 a younger member of the gang to commit a robbery?

13 A Yes, ma'am.

14 Q Could a senior member of the gang tell a younger member  
15 of the gang to commit a shooting?

16 A Yes, ma'am.

17 Q And could a senior member of the gang tell a younger  
18 member of the gang to take a charge for him?

19 A More than likely, yes.

20 MS. HOFFMAN: No further questions. Thank you.

21 THE COURT: Recross, Mr. O'Toole.

22 MR. O'TOOLE: No, sir. Thank you.

23 THE COURT: May the witness be excused?

24 MR. O'TOOLE: He may.

25 MR. FRANCOMANO: Yes, Your Honor.

1 THE COURT: You're excused, sir. You may depart.

2 Next witness?

3 MR. MARTINEZ: Your Honor, the government calls  
4 Michael Gwaltney.

5 THE COURT: Spell that last name for me, will you,  
6 please.

7 MR. MARTINEZ: Gwaltney.

8 THE COURT: G-w-a-l-

9 MR. MARTINEZ: -t-n-e-y.

10 THE COURT: Michael Gwaltney. Thank you.

11 THE CLERK: Sir, if you would please raise your  
12 right hand to be placed under oath.

13 MICHAEL GWALTNEY,  
14 called as a witness, being first duly sworn, was examined and  
15 testified as follows:

16 THE WITNESS: Yes.

17 THE CLERK: Thank you, sir. You may enter the  
18 witness box and watch your step. You may have a seat. And if  
19 you would please speak directly into the microphone, state  
20 your first and last name and spell your first and last name.

21 THE WITNESS: My name Michael Gwaltney,  
22 M-i-c-h-a-e-l; last name Gwaltney, G-w-a-l-t-n-e-y.

23 THE CLERK: Thank you, sir.

24 THE COURT: Your witness, Mr. Martinez.

25 MR. MARTINEZ: Thank you.



DIRECT EXAMINATION

BY MR. MARTINEZ:

Q Mr. Gwaltney, good afternoon.

A Good afternoon.

Q Could you tell us how old you are, please?

A 42.

Q Where are you from, sir?

A Baltimore, Maryland.

Q Where in Baltimore did you grow up?

A East Baltimore.

Q Do you go by any nicknames?

A Mike G.

Q Are you familiar with an organization called the  
Black Guerilla Family or BGF?

A Yes, I am.

Q Is BGF a gang?

A Yes, it is.

Q Are you a member of BGF?

A Yes, I am.

Q Tell us when you became a member of BGF?

A 1997.

Q Where did you become a member of BGF?

A Maryland House of Correction.

Q Is that facility referred to by any other name?

A The Cut.

1 Q What were you locked up for when you joined BGF in the  
2 Maryland House of Corrections?

3 A Drug possession.

4 Q How did you become a member of BGF?

5 A Had to put in work.

6 Q What does that mean?

7 A Had to stab somebody.

8 MR. O'TOOLE: I'm sorry, I couldn't hear that  
9 response.

10 A I had to stab somebody.

11 Q (BY MR. MARTINEZ) When you say you had to, did someone  
12 tell you to?

13 A Yes.

14 Q Who told you to stab somebody?

15 A My sponsor.

16 Q Who was your sponsor?

17 A Mike Gray.

18 Q And who did you stab?

19 A D.C. guy.

20 Q Is that another inmate at the house of corrections from  
21 D.C., is that what you're saying?

22 A Yes, it is.

23 Q You said Mike Gray ordered you to do that; is that  
24 right?

25 A Yes.

1 Q If I can get the document camera to come back up, I'll  
2 show you an exhibit. This is Government's Exhibit PHI 33, who  
3 are we looking at here Mr. Gwaltney?

4 A It's Mike Gray.

5 Q Could you tell us where BGF got started?

6 A Originally?

7 Q Yes.

8 A California.

9 Q Could you tell us how it came to Maryland?

10 A Guy named Ray Ray.

11 Q And how was it that Ray Ray brought BGF to Maryland?

12 A He did time in California.

13 Q And did he later do time in Maryland?

14 A Yes.

15 Q Did you have to take an oath to join BGF?

16 A Yes.

17 Q Is the oath referred to by any other names?

18 A Oatmeal.

19 Q Do you remember the oath?

20 A Somewhat, I ain't recite in a while.

21 Q Can you recite what portions you do remember?

22 A Should I ever be untrue and forsake the chosen few, this  
23 oath shall kill me. Shall I become lax in discipline in times  
24 of strife and neglect my brother, this oath shall kill me. If  
25 I ever do harm or allow harm to touch my brother, this oath

1 shall kill me. If ever at any time I refuse or give  
2 assistance to this oath or reject my brother, this oath shall  
3 kill me. If I reveal the sworn secrets to this oath, this  
4 oath shall kill me.

5 Q Mr. Gwaltney, does BGF have a set of rules?

6 A Yes.

7 Q What are the rules called?

8 A 22s and 33s.

9 Q Are BGF members expected to know and follow the 22s and  
10 33s?

11 A Yes, they do.

12 Q Is there a rule in those 22s and 33s that addresses  
13 cooperating with law enforcement?

14 A Yes, it is.

15 Q What does that rule say?

16 A I can't recite it, but I know it's severe punishment.

17 Q Are you violating the rule by testifying here today?

18 A Yes, I am.

19 Q What's the punishment for that violation?

20 A Death.

21 Q If a -- in your experience as a member of BGF, in  
22 situations where a BGF member believes that somebody is  
23 cooperating against him, how does that member go about  
24 determining whether the person is in fact cooperating?

25 A We got to investigate it.

1 Q And what do you do to investigate, what kind of things do  
2 you look for?

3 A Paperwork.

4 Q What do you mean by paperwork?

5 A Somebody name in somebody court paperwork.

6 Q Based on your experience as a member of BGF in prison, is  
7 it common or uncommon for inmates to ask other inmates for  
8 their paperwork?

9 A Yeah, it's common.

10 Q What's the purpose of that?

11 A Make sure nobody's snitching.

12 Q Can you tell us whether BGF operates on the streets as  
13 well as in prisons?

14 A Yes, it does.

15 Q How is BGF organized on the streets of Baltimore?

16 A They have different sets of regimes throughout the  
17 city.

18 Q Are you familiar with what's called a bubble?

19 A Yes.

20 Q What's a bubble?

21 A A bubble is a structure inside a regime.

22 Q Are there different positions within the bubble?

23 A Yes.

24 Q What are some of those positions?

25 A C, LTC, MOJ, MOD, field general, field Marshal.

1 Q Are you familiar with the term bushmen?

2 A Yes.

3 Q What's a bushman?

4 A A high ranking BGF member.

5 Q Are you a bushman?

6 A Yes.

7 Q Tell us roughly when you became a bushman.

8 A 2010.

9 Q What, if anything, did you have to do to become a  
10 bushman?

11 A Had to put in work again.

12 Q What kind of work did you have to put in this time?

13 A I had to murder somebody.

14 Q Who did you have to murder?

15 A Another bush member.

16 Q And do you know why that bush member had to be  
17 murdered?

18 A Yes, I do.

19 Q Could you tell us?

20 A For the same thing I was doing right here.

21 Q He was testifying?

22 A Yes.

23 Q What was that person's name?

24 A Darril Austin.

25 Q And who asked you to kill Darril Austin?

1 A Mike Gray.

2 Q What was Mike Gray's role or rank in the gang at the time  
3 he asked you to kill Darril Austin?

4 A He was the joker.

5 Q What do you mean by that?

6 A High position inside the bubble of the bush member.

7 Q So when Mike Gray told you to kill Darril Austin, did you  
8 feel like you had a choice?

9 A I didn't have no choice.

10 Q Under the gang's rules, what would have happened had you  
11 refused to kill Darril Austin?

12 A I would have became the target.

13 Q What does that mean?

14 A If I refused to kill Darril, I would have been killed  
15 myself.

16 Q When you became a bush member, Mr. Gwaltney, did you have  
17 to take another oath that was different from the Oatmeal?

18 A Yes.

19 Q How is that oath different from the Oatmeal?

20 A It's very different.

21 Q Will you tell us what you remember about it?

22 A It just a different oath, that's all.

23 Q Do you remember that oath?

24 A Yes.

25 Q Could you go ahead and recite it for us?

1 A Well, had to be two people, two bush members were to  
2 elaborate on it. If I run across another bush member, I would  
3 ask him where he sleep, he would say in the bush. I would ask  
4 him how you enter, he would tell me underground, beneath the  
5 sea, use the dragon tooth as the key. I would ask him what  
6 books he read, he would say Acts 35, Verse 7.

7 Q Is that all there is to it?

8 A Yeah.

9 Q During your time as a member of BGF, Mr. Gwaltney, did  
10 you sell drugs?

11 A No.

12 Q Did you commit robberies?

13 A Yes.

14 Q You mentioned that you were serving a sentence for  
15 drug-related conduct when you joined BGF in 1997; is that  
16 right?

17 A Yes.

18 Q Do you have other felony convictions?

19 A Yes.

20 Q Were you convicted of possession with intent to  
21 distribute in 2004?

22 A Yes.

23 Q How about unlawful manufactured CDS in '99?

24 A Yes.

25 Q How about burglary in '97?



1 A Yes.

2 Q How about possession with intent to distribute in '95?

3 A Yes.

4 Q How about possession with intent to distribute in '94?

5 A Yes.

6 Q And finally, were you charged in this court and convicted  
7 of a Hobbs Act robbery in 2013, I believe?

8 A Yes, I was.

9 Q So in connection with that federal Hobbs Act charge,  
10 did -- you just said you were convicted; right?

11 A Yes.

12 Q Did you plead guilty?

13 A Yes, I did.

14 Q As part of your guilty plea, did you agree to  
15 cooperate?

16 A Yes.

17 Q And does part of your cooperation agreement require you  
18 to testify fully and truthfully today?

19 A Yes, it does.

20 Q If you do everything that's asked of you under your  
21 cooperation agreement, what is it that you're hoping to get?

22 A A lesser sentence.

23 Q Has anybody made any promises or guarantees about what  
24 kind of sentence you might get?

25 A No, they haven't.

1 Q Is there any connection between your eligibility for a  
2 sentencing reduction and the result in this case?

3 A No, it ain't.

4 Q Who's responsible for sentencing you?

5 A The judge.

6 Q What would happen to your plea agreement if you lied  
7 today?

8 A It would be terminated.

9 Q What would happen if you exaggerated?

10 A It would be terminated.

11 Q So let's focus on -- change gears here and focus on the  
12 2012 time period before you got locked up for that robbery  
13 charge. Were you living in Baltimore at the time?

14 A Yes.

15 Q What part of the city were you living?

16 A East Baltimore.

17 Q Were you familiar with BGF regimes operating in various  
18 parts of East Baltimore?

19 A Yes.

20 Q Was there a BGF regime operating in the Greenmount  
21 neighborhood?

22 A Yes, there was.

23 Q Did you ever hang out in the Greenmount neighborhood in  
24 the 2012 time period?

25 A Time to time.

1 Q Were you familiar with BGF members in the area?

2 A Yes.

3 Q Were you using drugs in the 2012 time period?

4 A Yes, I was.

5 Q What kind of drugs were you using?

6 A Cocaine, heroin.

7 Q Did you ever get drugs in the Greenmount neighborhood?

8 A Yes.

9 Q I want to ask you, Mr. Gwaltney, if you're familiar with  
10 a individual named Geezy?

11 A Yes.

12 Q Was Geezy a member of BGF?

13 A Yes, he is.

14 Q Was Geezy a member of the BGF Greenmount Regime?

15 A Yes, he is.

16 Q During this 2012 time period when you were taking cocaine  
17 and heroin for personal use, did you ever go to the Greenmount  
18 neighborhood to pick up drugs?

19 A Yes.

20 Q Did you ever get drugs from Geezy?

21 A Yes.

22 Q What kind of drugs would you get from him?

23 A Cocaine.

24 Q Approximately how many times in 2012 would you say you  
25 got cocaine from Geezy?

1 A Probably two or three times.

2 Q Did you have to pay Geezy for that cocaine that you got  
3 from him?

4 A No.

5 Q Why not?

6 A To show homage to a bush member.

7 Q I'm going to show you what's come into evidence as  
8 Government's Exhibit PHI 27. Do you recognized that person?

9 A Yes.

10 Q Who's that?

11 A That's Roscoe.

12 Q Is Roscoe a member of BGF?

13 A Yes.

14 Q Was Roscoe in the BGF Greenmount Regime?

15 A Yes.

16 Q Is Roscoe related to Geezy?

17 A It's his brother.

18 Q Did you ever get drugs from Roscoe?

19 A Yes.

20 Q What kind of drugs?

21 A Cocaine.

22 Q How often would you get cocaine from Roscoe?

23 A Quite often.

24 Q How often is quite often?

25 A Three or four times a week.

1 Q Did you have to pay for those drugs?

2 A Mostly not.

3 Q So on the occasions when you did not have to pay, why  
4 not?

5 A Same reason, bush member.

6 Q I want to show you PHI -- Government's Exhibit PHI 29,  
7 who's that?

8 A That's Mustafa.

9 Q Is Mustafa in the BGF Greenmount Regime?

10 A Yes.

11 Q Were you getting cocaine from him as well?

12 A Yes.

13 Q Did you know someone in the Greenmount neighborhood named  
14 Joe?

15 A Yes.

16 Q Was Joe in the BGF Greenmount Regime?

17 A Yes, he was.

18 Q Let me show you PHI 6, who's that?

19 A That's Joe.

20 Q Do you recall during this time period we're about talking  
21 about, 2012, learning of a dispute of Roscoe, whose picture we  
22 just showed you, and Joe?

23 A Yes.

24 Q Who told you about that dispute?

25 A Roscoe.

1 Q What did he tell you?

2 A Told me Joe hit him with a gun or something.

3 Q And why was Roscoe telling you about that?

4 A He was asking me permission to do something to him.

5 Q What was he asking you permission -- what was he asking  
6 for your permission to do?

7 A Kill him.

8 Q What did you tell Roscoe?

9 A I told him he couldn't do that.

10 Q Why not?

11 A Because we had to investigate the situation, plus, it was  
12 another bush member in that area and I didn't want to overstep  
13 his boundaries.

14 Q Who was the other bush member in that area that you just  
15 mentioned?

16 A His name is Stimey.

17 Q Let me show you Government's Exhibit PHI 81, who's  
18 that?

19 A That's Stimey.

20 Q Did Roscoe ultimately kill Joe?

21 A No.

22 Q I want to direct your attention to the fall of 2012, did  
23 there come a time when Roscoe and Mustafa asked you to rob  
24 someone in the Greenmount neighborhood?

25 A Yes.

1 Q Who did they ask you to rob?

2 A Guy named Porky.

3 Q Did they tell you why they wanted you to rob Porky?

4 A I guess they just ain't like him, I don't know.

5 Q Did they tell you where you could find Porky?

6 A Yes.

7 Q Where was that?

8 A On North Avenue inside an apartment building.

9 Q Did they tell you what Porky looked like?

10 A I can't recall.

11 Q How did you know who you were looking for?

12 A They told me where to find him.

13 Q Okay. Where in the building to find him?

14 A Yes.

15 Q I want to show you Government's Exhibit PHI 23. Who's  
16 that, Mr. Gwaltney?

17 A It's Porky.

18 Q Did there come a time where you carried out the robbery  
19 of Porky?

20 A Yes.

21 Q Did you commit that robbery alone or was anyone else with  
22 you?

23 A My co-defendant was with me.

24 Q And who's that?

25 A Devon Martin.

1 Q Where did the robbery take place?

2 A Inside the apartment building on North Avenue.

3 Q I'm going to show you what's come in as  
4 Government's Exhibit GM 8. What are we looking at there?

5 A That's the apartment building.

6 Q Where in the building did you find Porky?

7 A In the back stairwell.

8 Q Was anyone else with him when you found him?

9 A Yeah, I believe his wife, his girlfriend or something.

10 Q Were you carrying a weapon of any kind?

11 A Yes.

12 Q What were you carrying?

13 A I believe I had a .45 at that time.

14 Q How about Mr. Martin, who was with you?

15 A I believe he had a .38.

16 Q So you and Mr. Martin found Porky and his wife or  
17 girlfriend, as you say, in the stairwell. Tell us what  
18 happened from there.

19 A Just approached him and pulled out our guns and just  
20 robbed him.

21 Q What specifically did you take?

22 A About 3- or 400 dollars and some cocaine and some  
23 marijuana.

24 Q And was that the end of the robbery on that particular  
25 day?



1 A Yes.

2 Q When was the next time you saw Porky after that robbery  
3 was over?

4 A The next day.

5 Q Where did you see him the next day?

6 A Same place, in front of the building this time, though.

7 Q Can you point out on the picture, does the picture  
8 capture where you saw Porky the next day?

9 A Right here on the steps, here.

10 Q Tell the ladies and gentlemen of the jury what happened  
11 when you saw Porky on the steps the day after the robbery.

12 A When I was walking up North Avenue, he seen me, he got  
13 off the steps, started walking towards me. He got like two  
14 feet in front of me and pulled out a gun and started clicking  
15 it in my face.

16 Q What did you do?

17 A I pulled out my gun.

18 Q What happened then?

19 A He turned around and ran, I dropped behind him. He kept  
20 straight down North Avenue, but I wanted him to cut down  
21 Guilford, but he kept straight.

22 Q Why did you want him to cut down Guilford?

23 A So I could kill him.

24 Q Did there come a time when you stopped chasing him?

25 A Yes.

1 Q What, if anything, did you do about the fact that Porky  
2 had pulled a gun on you outside this building?

3 A I just called Roscoe and told Roscoe what happened.

4 Q What did Roscoe say when you told him that?

5 A Told me don't worry about it, he would take care of  
6 him.

7 Q What did you mean Roscoe to mean by saying they would  
8 take care of him?

9 A They would kill him for me.

10 Q What did you say when Roscoe told you about that plan?

11 A I told him don't do that, just call me when he come back  
12 there.

13 Q Why were you telling Roscoe to hold off and call you?

14 A Because I wanted to kill him myself.

15 Q Did there come a time where you did get a call from  
16 Roscoe?

17 A Yes.

18 Q What did he tell you?

19 A That he's in the building.

20 Q And by he, who do you mean?

21 A Porky.

22 Q And you're talking about the same building we're looking  
23 at on GM 8?

24 A Yes.

25 Q After you got that call from Roscoe, did you go to the

1 building?

2 A Yes, I did.

3 Q And when you got there, tell us where you went, did you  
4 go inside?

5 A Inside the building.

6 Q When you went inside, were there any other BGF members  
7 there?

8 A Yes.

9 Q Who was there?

10 A Roscoe, Mustafa, Wes, and some other little kids, I don't  
11 remember their names.

12 Q When you went inside, did you learn where Porky was?

13 A Yes.

14 Q Where was he?

15 A He was inside one of the apartments.

16 Q So did you go looking for him at that apartment?

17 A No. I just stayed out waiting for him to come out.

18 Q How long did you wait for him to come out?

19 A About half an hour.

20 Q What happened after half an hour?

21 A Geezy showed up.

22 Q And actually, just for the record, I should have done  
23 this earlier, but can you identify Geezy for the jury and  
24 point out an article of clothing he's wearing?

25 A Right there with the gray sweater.

1 Q So what happened --

2 THE COURT: Record will reflect the witness has  
3 identified the Defendant Johnson.

4 THE WITNESS: Excuse me?

5 THE COURT: Nothing. Next question.

6 Q (BY MR. MARTINEZ) What happened after Geezy showed up,  
7 Mr. Gwaltney?

8 A We was talking about the situation with -- Porky had did  
9 and Geezy say he was going to get him out. He knew who lived  
10 in the apartment, he was going to get him to put him out.

11 Q What did you say about those plans to get him out, what  
12 did you tell Geezy?

13 A I said, go ahead, nephew, go ahead, so I can wear him  
14 out.

15 Q When you say "go ahead, nephew," can you tell the ladies  
16 and gentlemen of the jury what you meant by nephew?

17 A It's a term bush members call other BGF members.

18 Q And do younger BGF members in turn call bush members  
19 uncle sometimes?

20 A Yes.

21 Q Now, the latter part of that statement, "go ahead, let  
22 him out, so I can wear him out"; is that what you said?

23 A Yes.

24 Q What did you mean by wear him out?

25 A Kill him.

1 Q So what happened then, did Geezy try to help you get  
2 Porky out of the building -- or the apartment rather?

3 A Yeah. He went and knocked on the door but nobody  
4 answer.

5 Q So how much longer did you wait?

6 A Five, ten minutes at the most.

7 Q And what happened after those five to ten minutes?

8 A I left.

9 Q Where did you go?

10 A I went to a party at the pool hall.

11 Q Where was the pool hall?

12 A 25th.

13 Q How long were you at the party at the pool hall?

14 A Till it went out, 2:00 o'clock, 2:00 o'clock a.m.

15 Q And after the pool hall closed, did you go back past the  
16 apartment building where you had been looking for Porky  
17 earlier in the night?

18 A Yeah, I was going back there to look for him again.

19 Q And why were you trying to look for him again?

20 A So I can kill him.

21 Q What did you notice as you passed the building?

22 A Whole lot of police and yellow tape, ambulance, fire  
23 trucks.

24 Q Later that night, did there come a time you got a call  
25 from Roscoe?

1 A Yes.

2 Q What, if anything, did Roscoe tell you about what  
3 happened at the building after you left?

4 A He told me Geezy just got shot.

5 Q Did he say who shot him?

6 A Said Porky shot him.

7 Q So all this happened during the -- roughly the fall of  
8 2012; is that right?

9 A Yes, at the end.

10 Q So let's fast forward a little bit. Did there later come  
11 a time that you learned that Porky had a connection to someone  
12 in your family?

13 A Yes.

14 Q Who was that?

15 A My sister and my daughter mother.

16 Q And how did you come to learn about the connection  
17 between Porky and your sister?

18 A My sister told me.

19 Q Did there come a time that your sister put you in touch  
20 with Porky?

21 A Yes.

22 Q Tell us about that.

23 A Well, she made us squash the beef we had between each  
24 other. We talked over the phone about it. He know what I do  
25 for a living, so he understood. I just apologized for doing

1 that to him while he had his wife with him and as far --

2 Q Did -- I'm sorry. I interrupted you, I'll let you finish  
3 your answer.

4 A Excuse me?

5 Q I'll let you finish your answer, I didn't mean to cut you  
6 off.

7 A We squashed whatever beef we had and I told him  
8 everything's dead between me and him, but the situation with  
9 him and Geezy, I can't control that.

10 Q Why was it that you couldn't control that?

11 A He shot him.

12 Q During the answer you just gave, you said "he," i.e.,  
13 that is Porky --

14 A Yes.

15 Q "I know what you do for a living," what is it you do for  
16 a living?

17 A Rob drug business.

18 Q Are there other BGF members that do that for a living?

19 A Quite a few.

20 Q Are there people in every regime who do that for a  
21 living?

22 A No.

23 Q Let's fast forward a little bit more. Did -- was there a  
24 time when you were incarcerated at the  
25 Chesapeake Detention Facility here in Baltimore in connection

1 with your federal case?

2 A Yes.

3 Q And while you were at CDF, did there come a time Porky  
4 wound up there too?

5 A Yes.

6 Q And a little bit after that, did there come a time when  
7 Geezy wound up there as well?

8 A Yes.

9 Q After Geezy got there, did you have a conversation with  
10 Geezy about Porky?

11 A Yes.

12 Q What did he tell you?

13 A He told me he wanted me to do something to him.

14 Q And by doing something to him, what did you understand  
15 that to mean?

16 A Bring harm to him.

17 Q What did you tell Geezy?

18 A I told him no, he can't do that.

19 Q Why not?

20 A Because I didn't want him to get in no trouble.

21 Q Few more questions about CDF. So you told us earlier  
22 that BGF started as a prison gang; right?

23 A Yes.

24 Q And over the years, based on your criminal history, it  
25 sounds like you've been incarcerated in multiple different



1 facilities in Maryland; is that right?

2 A Yes.

3 Q Do you know whether BGF members smuggle drugs into  
4 prisons in Maryland?

5 A Yes.

6 Q Have you participated in smuggling drugs into prisons in  
7 Maryland?

8 A Yes.

9 Q What are some of the ways that drugs get smuggled into  
10 prisons?

11 A Visits, correctional officers.

12 Q Let's take visits first: What do you mean by that, how  
13 does that facilitate smuggling?

14 A Your loved one bring it into the visit.

15 Q I'm sorry, I didn't catch that.

16 A I said your loved ones, whoever come visit, bring you the  
17 contraband.

18 Q Is it that simple, you just grab the contraband from them  
19 in a visiting room?

20 MR. O'TOOLE: Objection, Your Honor.

21 THE COURT: Overruled. If he can answer.

22 A Well, they leave it inside the visiting room.

23 Q (BY MR. MARTINEZ) Okay.

24 A Somebody pick it up later on.

25 Q Okay. So it's not always the visitee, the person being

1 visited, who picks it up?

2 A Right.

3 Q How about the correctional officer route, how does that  
4 work?

5 A Correctional officers just bring it in.

6 Q Do BGF members pay them to do that?

7 A Some places.

8 Q Have you participated in smuggling drugs into CDF?

9 A Yes.

10 Q What kind of drugs did you smuggle into the jail?

11 A Suboxones, tobacco, marijuana.

12 Q What's Suboxone?

13 A Synthetic drug.

14 Q Can you get high by taking it?

15 A Yes.

16 Q How do you take it?

17 A I snort it.

18 Q Can it be taken other ways?

19 A Put it on your tongue.

20 Q What does it look like, how is it packaged?

21 A Little blue package, just a little orange strip.

22 Q And when you were in CDF and you wanted to -- say you  
23 wanted to buy some Suboxone from another person in the jail,  
24 how much -- what was the going rate, how much would it cost?

25 A \$50 a strip.

1 Q And if you went ahead and bought that Suboxone, how would  
2 you go about paying for it?

3 A Western Union or my family member take it to the person  
4 family member.

5 Q So the money would change hands on the outside?

6 A Yes.

7 Q While you were at CDF, were other BGF members getting  
8 drugs in the jail?

9 A Yes.

10 Q Can you tell us whether Geezy had drugs in CDF?

11 A Yes.

12 Q Can you tell us whether you got drugs from Geezy in  
13 CDF?

14 A Yes.

15 Q What kind of drugs did you get from him?

16 A Suboxones.

17 Q Did you ever ask Geezy to send you Suboxones to your  
18 housing pod?

19 A Yes.

20 Q Did you wind up receiving the drugs you asked him to send  
21 you?

22 A Yes, I have.

23 Q Can you tell us how the drugs were brought to you?

24 A Through the working men, the workers in the facility.

25 Q What's a working man?

1 A Somebody that works in the facility.

2 Q Is that an inmate or a detainee?

3 A Yeah, inmate.

4 Q So how does a -- how does a working man -- how does a  
5 detainee who is a working man differ from a detainee who does  
6 not have working man privileges?

7 A He have the privilege to walk around the facility.

8 Q So he's got skates?

9 A Yes.

10 Q I asked you earlier about Suboxone and you explained what  
11 it is how it's taking and everything. Are there any other  
12 slang terms for Suboxone?

13 A We call them Bupes.

14 Q Bupes?

15 A Bupes.

16 Q Does CDF have a medical unit in the facility?

17 A Yes.

18 Q Would you visit the medical unit when you were detained  
19 there?

20 A Yes.

21 Q Why would you go there?

22 A Diabetic.

23 Q So you were getting insulin?

24 A Yes.

25 Q Did you ever see Geezy at the medical unit?

1 A Yes.

2 Q Did you ever get Suboxone from Geezy when you were at the  
3 medical unit?

4 A Yes, I have.

5 Q How many times did that happen?

6 A Probably twice.

7 Q Did you have to pay for the Suboxone that he gave you?

8 A No, I didn't.

9 Q Why not?

10 A I guess he was just showing homage to a bush member.

11 MR. MARTINEZ: Court's indulgence.

12 THE COURT: Yes.

13 MR. MARTINEZ: No further questions.

14 THE COURT: Mr. O'Toole.

15 MR. O'TOOLE: Thank you.

16 CROSS-EXAMINATION

17 BY MR. O'TOOLE:

18 Q Mr. Gwaltney, good afternoon, sir.

19 A How are you doing?

20 Q I'm Jeffrey O'Toole, I represent -- along with  
21 Mr. Enzinna, I represent Gerald Johnson.

22 A Okay.

23 Q You had just told Mr. Martinez that you pled guilty to a  
24 case in August of 2013; is that right?

25 A Yes, I have.

1 Q And involved in that plea was an offer or an agreement  
2 for you to plead guilty and to cooperate with the government  
3 in exchange for hoping your sentence would be shorter; is that  
4 right?

5 A Yes.

6 Q All right. Have you been sentenced in that case yet?

7 A No, I haven't.

8 Q So from August 2013 until today, you still have not been  
9 sentenced?

10 A Right.

11 Q Is it the same judge who's sitting to your left?

12 A Yes, it is.

13 Q It is. All right. You've pled guilty to conspiring to  
14 commit a robbery; is that right?

15 A Yes.

16 Q And you pled guilty to possession of a firearm; is that  
17 correct? So it's two counts.

18 You agreed in the course of your plea agreement that you  
19 were -- all parties agree that you were something called a  
20 career criminal; right?

21 A Right.

22 Q All right. How old are you, 42?

23 A Yes, I am.

24 Q How long have you been -- since you were 20 years old,  
25 how many years have you been in prison, incarcerated?

1 A Since I was 20?

2 Q Yeah. The last 22 years, how many years have you been in  
3 jail?

4 A Over 17 years.

5 Q So almost the whole time you've been an adult you've been  
6 in prison?

7 A Yes, I have.

8 Q Have you gotten to the point where you're pretty tired of  
9 being in prison?

10 A Yes, I am.

11 Q Have you gotten to the point where you'd like to get out  
12 of prison as soon as you possibly could?

13 A Anybody would.

14 Q Right. Now, when you pled guilty in August 2013 as a  
15 career criminal, you were in big trouble, weren't you?

16 A I was in trouble.

17 Q You were likely to spend perhaps the rest of maybe the  
18 good years of your life in prison, weren't you?

19 A Probably so.

20 Q And you finally came to an agreement that for  
21 Mr. Gwaltney, the best thing for you to do was to plead guilty  
22 and cooperate with the government; right?

23 A I'm just here to tell truth and be honest, man.

24 Q And the reason that you decided to tell the truth and be  
25 honest was that Mr. Gwaltney was going to have hopefully --

1 MR. MARTINEZ: Objection. The witness's name is  
2 Gwaltney.

3 MR. O'TOOLE: Your Honor, I have to admit to having  
4 a hard time pronouncing his name. I'll be happy to do it,  
5 whatever he wants me to, I'll try it.

6 THE COURT: How do you pronounce your name?

7 THE WITNESS: It's Gwaltney.

8 THE COURT: Two syllables, Gwaltney.

9 Q (BY MR. O'TOOLE) So Mr. Gwaltney, your hope was to come  
10 up with a way to make a deal with the government to get out of  
11 jail before the end of your life; right?

12 A I just answered that.

13 Q Is that correct?

14 A I'm just here to tell the truth and be honest.

15 Q But as a side to that, the reason that you decided --  
16 when you were -- in 2015 -- excuse me, 2013, four years ago,  
17 you didn't wake up one day and say, you know, what I think the  
18 best thing for me to do here is to just start telling the  
19 truth. That's not what happened, is it? Is it?

20 A I'm just here to tell the truth. I just told you that  
21 twice.

22 Q You did tell me that twice. I'm going to ask you again:  
23 When you were talking and deciding what to do with this charge  
24 that was looking to keep you in jail perhaps for the rest of  
25 your life, you decided there had to be something else you



1 could do; correct?

2 A No, sir.

3 Q You didn't decide that, if I plead guilty and help the  
4 government and testify, then maybe I won't spend as much time  
5 in jail?

6 A Well, that's why I'm here, I hope to get a lesser  
7 sentence.

8 Q That's all I'm trying to get -- that's all I'm --

9 A You got to put it in other terms for me to understand.

10 Q All right. And that's my fault and I apologize. I'm not  
11 trying to trick you.

12 Part of your plea agreement was that if you cooperate  
13 truthfully --

14 A Right.

15 Q -- and if you don't exaggerate and if you help us in the  
16 prosecution of somebody else, we may be able to help you when  
17 it comes to sentencing by filing something called a 5K motion.  
18 Do you remember that?

19 A Yes.

20 Q All right. So part of your plea agreement, part of the  
21 sealed part that was afterwards, provides for the government  
22 to file a 5K, if they believe you and if they trust your  
23 testimony; right?

24 A Right.

25 Q And as Mr. Martinez asked you before, it wasn't depending

1 on what happens. As long as you cooperate, you get the deal;  
2 right?

3 A I don't understand. I'm not a lawyer, man. I don't  
4 understand the way you putting things.

5 Q Let me try again, I apologize. What I want to ask you  
6 is, your deal with the government, your cooperation agreement  
7 with the government, only requires you to tell the truth and  
8 be helpful; correct?

9 A Right. Yes.

10 Q And that's what you're doing here today?

11 A Absolutely.

12 Q All right. You pled guilty on August 13th, 2013, how  
13 many other trials have you testified in since that date?

14 A None.

15 Q So this is the very first trial that you've testified in  
16 since the day that you negotiated the deal with the  
17 government, decided to plead guilty and cooperate --

18 A Right.

19 Q -- in hopes of getting a smaller sentence --

20 A Right.

21 Q -- and here we are four years later and you're just  
22 getting around to it?

23 A Absolutely.

24 Q All right. So it's been a long way, but is this the --  
25 is this the path you were hoping for all along, to have a way

1 to help your sentence get smaller, this was the goal?

2 A A goal from the beginnings was to hope to get a lesser  
3 sentence.

4 Q All right. Along the way, you met with law enforcement  
5 in carrying out your deal to cooperate; correct?

6 A Yes.

7 Q All right. Now I'm going to ask you, do you recall the  
8 first time you sat with down prosecutors and law enforcement  
9 was the 10th of December, 2014, which would have been more  
10 than a year -- about a year -- almost a year and a half after  
11 you pled guilty, do you remember that?

12 A It might have been, I can't remember.

13 Q Okay. But it wasn't right away, you didn't plead guilty  
14 and then cooperate immediately, did you?

15 A Excuse me?

16 Q You didn't plead guilty in August of 2013 and then  
17 immediately start talking to the government about cases?

18 A I can't -- I don't -- I can't remember.

19 Q Okay. Well, let me -- if I told you that the first time  
20 you sat down was a year and some months later, would you think  
21 that sounds about; right?

22 A Okay, that probably --

23 Q All right. Now, do you remember -- this may get  
24 complicated, but do you remember about six months after that,  
25 you sat down with them one more time and talked to them?

1 A Probably so.

2 Q All right. When you sat down with them, even the first  
3 time in 2014, you started telling them about some murders you  
4 had committed?

5 A Yes.

6 Q All right. And you just told them one after another,  
7 murders that you had been involved in; right?

8 A Yes.

9 Q So when Mr. Martinez was asking you about the murder of  
10 Mr. Austin, who was a BGF member, that wasn't the only murder  
11 that you told them about was it?

12 A No, sir.

13 Q Austin was an important murder for you because that was  
14 your promotion; right? That got you into the bush as a  
15 bushman; correct?

16 A It was also me doing it, yes.

17 Q Yeah, so that was a milestone for you, you actually got  
18 rank in BGF by doing that, didn't you?

19 A That wasn't my goal.

20 Q But that's what happened?

21 A That's what happened.

22 Q All right. So you were told to do the work, you did the  
23 work, you got the promotion; right?

24 A Yes.

25 Q And as a bushman, you got certain privileges, didn't

1 you?

2 A Yes.

3 Q You got drugs for free from people?

4 A Basically.

5 Q And you got -- people paid homage to you?

6 A Yes.

7 Q And you walked around -- you didn't have to sell drugs  
8 yourself, did you?

9 A That's not my line of work.

10 Q Right. You just rob people, steal money from somebody  
11 else, somebody else who's got the money, and you steal money  
12 from them; right?

13 A That's what you want to call it.

14 Q Well, what do you want to call it?

15 A Supporting my habit.

16 Q Support your habit, but you don't call it stealing?

17 A No, it's a difference.

18 Q It's different. How is it different?

19 A There's a difference between taking and stealing.

20 Q Tell me the difference.

21 A Difference is me taking something from you for me,  
22 opposed to stealing something from you.

23 Q I hear that you're saying the words. Tell me what taking  
24 something from somebody means.

25 A Taking something from somebody is being up front taking

1 it from them. Stealing is going behind their back, stealing  
2 it from them.

3 Q Okay. So your business -- you said to Mr. Martinez your  
4 business was robbing drug dealers; right?

5 A Yes.

6 Q Was that taking or stealing?

7 A That's taking.

8 Q That's just taking?

9 A Yes.

10 Q Give me an example of stealing.

11 A Going behind somebody back, stealing without their  
12 knowing.

13 Q I'm sorry, I --

14 A Stealing while they're not knowing about it.

15 Q You mean sneaking in and taking --

16 A Sneaking. Like if I go to your car out there and take  
17 something out your car without you knowing, that's stealing.  
18 If I point a gun at you to take something from you, it's  
19 taking. That's a difference.

20 Q So you were supporting your habit and supporting your  
21 family with money, you were just taking drugs?

22 A Yes.

23 Q Did you ever take money from people who weren't drug  
24 dealers?

25 A No.

1 Q Just took money from drug dealers?

2 A Yes.

3 Q Never robbed someone on the street who just happened to  
4 be walking --

5 A No.

6 Q So you -- six months later from the first time you sat  
7 down with the government -- now we're at six months later into  
8 May 15th -- May 5th of 2015, you sat down with them again and  
9 talked about some of your murders; correct?

10 A Yes.

11 Q Murders you had committed, and then another six months  
12 passed and still you hadn't testified; right, you hadn't gone  
13 to court; right?

14 A Right.

15 Q Another six months passed and you sat down and you talked  
16 with them on the 5th of November of 2015; is that right?

17 A Yes.

18 Q And that's when you started getting into the details of  
19 these murders, that's when you told them in great detail about  
20 the murder of Mr. Austin, for instance; correct?

21 A Yes.

22 Q And you also told them about the murder of a guy named  
23 Tim Harris?

24 A Yes.

25 Q Right. You all got together, members up in the bushmen

1 people, and decided that he was a problem, he had to go, and  
2 you did the work; right?

3 A Yes.

4 Q And you killed him?

5 A Yes.

6 Q Did you ever get charged with that murder?

7 A No, I haven't.

8 Q Did you ever get charged with the murder of Mr. Austin?

9 A No, I haven't.

10 Q Now, the 15th of November, you still haven't -- you still  
11 haven't -- you still haven't had a chance to testify, but let  
12 me ask you a question: When you met with the law enforcement  
13 on that day, did you talk about a long list of people that you  
14 knew in the community?

15 Let me read some names to you and tell me if you remember  
16 on the 5th of November 2015, you had a long conversation with  
17 law enforcement, and tell me if this is a list of people that  
18 you talked about when you talked to them, okay?

19 Did you talk about Gray?

20 A Mike Gray?

21 Q Yeah.

22 A Probably so, yeah.

23 Q Talked about Yaya?

24 A Probably so, yeah.

25 Q Tim?



1 A Yes.

2 Q Taz?

3 A Probably so, yeah.

4 Q Rough House?

5 A Probably so.

6 Q Noodles?

7 A Probably so.

8 Q Marcal?

9 A Who?

10 Q M-a-r-c-a-l, Marcal?

11 A Marcal, yeah.

12 Q All right. Talked about him. Major?

13 A Who?

14 Q Major.

15 A Yes. Yes.

16 Q Dorsey?

17 A Dorsey?

18 Q Yes, Dorsey.

19 A Yes.

20 Q Austin?

21 A Yes.

22 Q Jim Dog?

23 A Yes.

24 Q Talked about Jim Dog. How about Fareem?

25 A Who?

1 Q Fareem.

2 A I can't recall that name.

3 Q Don't recall that one. How about a guy named Joe?

4 A What Joe?

5 Q Joe Lawrence, Mr. Joe Lawrence, did you talk about him?

6 A Probably so.

7 Q Probably but maybe you don't remember it. LT?

8 A Probably so.

9 Q Person by the name of Mans, M-a-n-s?

10 A Man or Manny.

11 Q There's a Manny and there's Mans?

12 A Probably so.

13 Q Talked about both of them, didn't you?

14 A man by the name of Heads, H-e-a-d-s?

15 A Yes.

16 Q How about Joe?

17 A Yes.

18 Q Antonio?

19 A Yes.

20 Q Crip?

21 A Yes.

22 Q Ty?

23 A Yes.

24 Q Twan, Twang?

25 A Twan?

1 Q Yeah, Twan. Thank you.

2 A Yes.

3 Q Squirrel?

4 A Yes.

5 Q Monk?

6 A Monk?

7 Q Yeah, Monk.

8 A Yes.

9 Q All right. And Silly Rabbit?

10 A Yes.

11 Q All right. Silly Rabbit was the man who killed Twan;  
12 right?

13 A Yes.

14 Q You told them about that?

15 A Yes.

16 Q Tony Heights?

17 A Yes.

18 Q Tony Fox?

19 A Antonio Fox?

20 Q Antonio Fox.

21 A Yes.

22 Q Mark?

23 A Yes.

24 Q Heads?

25 A Two Heads?

1 Q Just two heads, Heads plural?

2 A No, you just asked me about Heads.

3 Q Did I ask you that before?

4 A Yes.

5 Q There's probably just one Heads, but I'm not sure. We'll  
6 skip that one.

7 Reggie?

8 A Yes.

9 Q How about Drip?

10 A Drip?

11 Q Drip or Drop, is there two people named Drip or Drop?

12 A Yes. Drop is --

13 Q All right. Darren Cox?

14 A Darren Cox?

15 Q Yeah, Darren Cox, heard of that name?

16 A Probably so, yeah.

17 Q How about Revere?

18 A Never heard of him.

19 Q Never heard Revere. How about Gralin?

20 A Gralin?

21 Q Yeah, Gralin, G-r-a-l-i-n?

22 A Probably so.

23 Q Do you remember that one?

24 A Probably so.

25 Q Rudy?

1 A Probably so.

2 Q How about Ken Burke?

3 A Who?

4 Q Ken Burke.

5 A Kenneth Burton?

6 Q That could be. But I'm asking about Ken Burke, do you  
7 recall a Ken Burke?

8 A I don't know no Ken Burke.

9 Q You don't know?

10 A No.

11 Q How about Ty Hutchinson?

12 A Yes.

13 Q How about Sweet Pea?

14 A Yes.

15 Q How about Darril?

16 A Darrek, yes.

17 Q Darril's the person you shot?

18 A You say Darrek or Darril?

19 Q Darril.

20 A Darril?

21 Q Yeah, D-a-r-r-i-l?

22 A All right.

23 Q And you shot him?

24 A Darril?

25 Q Yeah.

1 A Darril Austin.

2 Q Is that the Austin, Darril's first name?

3 A I don't know what Darril you're talking about, that's why  
4 I'm asking.

5 Q Let's skip that one.

6 MR. MARTINEZ: Your Honor, may we approach?

7 THE COURT: Yes.

8 (Bench conference on the record.)

9 THE COURT: Camille, what are we doing about the  
10 temperature? It's hot in here. Everybody's falling asleep.

11 THE CLERK: I'll call again.

12 MR. O'TOOLE: I'm wide awake, unusual.

13 THE COURT: I hope so. What's up?

14 MR. MARTINEZ: The issue I wanted to raise,  
15 Your Honor, so we've gone through a long list of names now. I  
16 certainly understand. The point Mr. O'Toole's making is  
17 obvious. But as we went through the list of names, what  
18 occurred to me and what I wanted to bring to the Court's  
19 attention, because I'm very sensitive to it, is this witness  
20 actually testified on direct what paperwork means and what the  
21 gang uses it for. And I certainly appreciate Mr. O'Toole has  
22 a client to represent, but at this point in the exercise, we  
23 are adding names he's provided information about. And every  
24 time Mr. O'Toole rattles off another name, that name ends up  
25 in the paperwork.

1 THE COURT: That's a very long list of names.

2 MR. O'TOOLE: Well, first of all, this list was  
3 assembled -- not being assembled presently. This was  
4 assembled in November 2015, so this is a list that's already  
5 been prepared and is assembled. The long list is because he  
6 didn't discuss my client --

7 THE COURT: Keep your voice down.

8 MR. O'TOOLE: He didn't discuss my client except one  
9 time at the very end. He said something about him and it was  
10 inaccurate. He said that he had killed -- my client shot and  
11 killed Porky. So he really didn't know what's going on, but  
12 he's talking about all of those people, including saying that  
13 my client shot Porky.

14 THE COURT: "My client shot and killed Porky,"  
15 Porky's not dead.

16 MR. O'TOOLE: I know that.

17 THE COURT: What are you saying, he said that --

18 MR. O'TOOLE: Yeah, he said that to the law  
19 enforcement.

20 MR. MARTINEZ: That's what the report says.

21 MR. O'TOOLE: Yeah, the report says --

22 MR. MARTINEZ: That's not his statement.

23 MR. O'TOOLE: I understand that, but I'm going to  
24 ask him if he said that to them and if he doesn't remember  
25 saying that, then I'll show him the document and go through

1 the routine. If he doesn't remember it, I'll stop.

2 THE COURT: Right.

3 MR. O'TOOLE: But that's a different story. The  
4 list is nearly done and I think I'm entitled, as Mr. Martinez  
5 says, entitled to show that there's a lot of people he's  
6 talking about in the very community we're talking about and my  
7 client doesn't come up, except when he does come up, he's  
8 asked about him and he says it in the incorrect way. And I  
9 think I'm entitled to go through that.

10 THE COURT: So what, the point is that he knows the  
11 names of lots of different people in this underworld, and so  
12 that shows that he's somebody with a great extent and breadth  
13 of knowledge. And yet with respect to your client, despite  
14 that great extent of his knowledge, he actually knows very  
15 little about Mr. Johnson.

16 MR. O'TOOLE: Right, and he doesn't get to mention  
17 Mr. Johnson until 2017, when -- in all fairness, the  
18 government then points directly to a picture of Mr. Johnson,  
19 says, is this Mr. Johnson, do you know about him and talk  
20 about him. Perhaps they didn't do that in 2015. But I think  
21 I'm entitled to say that he's talking about everybody in the  
22 community. He's talking about all the people out there  
23 that he's telling these law enforcement officers about. It's  
24 a small point but a long list. I apologize for the long list,  
25 but it is what it is. It's a list of people he talked about



1 on that particular day. It's a long list because the  
2 government made it a long list.

3 THE COURT: Are you near the end of the list?

4 MR. O'TOOLE: Close.

5 THE COURT: How close?

6 MR. O'TOOLE: Pretty close, maybe three-quarters of  
7 the way through.

8 THE COURT: What point do you -- what rhetorical or  
9 proof point do you make by making it through the entire list?

10 MR. O'TOOLE: Well, if the Court is directing me to  
11 stop, I'll stop.

12 THE COURT: I'm not. The record does not reflect  
13 that. I'm asking a question. I'm trying to decide whether  
14 I'm going to direct you to stop.

15 MR. O'TOOLE: I'm going to see if I can put half the  
16 jury to sleep and we're almost done -- it's almost done.

17 MR. MARTINEZ: Every other name that goes on the  
18 list is somebody else who's going to have paperwork saying  
19 another person who has justification under rules of BGF can  
20 kill him.

21 MR. O'TOOLE: That's not our problem.

22 MR. MARTINEZ: I recognize it's not your problem,  
23 but to the extent it's no longer relevant and the point has  
24 been made, I think the Court should be made aware of  
25 repercussions of that.

1 MR. O'TOOLE: Same thing with that this morning  
2 without objection.

3 MR. MARTINEZ: He mentioned like four people, not  
4 25.

5 THE COURT: I think we've heard a long enough list.  
6 Let's make the point.

7 (The following proceedings were had in open court.)

8 THE COURT: Okay. Next question, Mr. O'Toole.

9 Q (BY MR. O'TOOLE) Mr. Gwaltney, is it fair to say that  
10 when you met on November 5th, 2015, you talked about a good  
11 deal of names of people who were in that particular community;  
12 right?

13 A Yes.

14 Q And the purpose of that discussion was to tell the  
15 government what you knew about people in that community?

16 A Yes.

17 Q And when you talked to them --

18 MR. O'TOOLE: Court's indulgence, please.

19 Q (BY MR. O'TOOLE) The conversation toward the end of the  
20 day came around to whether or not you were aware of the  
21 shooting and the robbery, the shooting by Porky and the  
22 robbery by you of him. The conversation with law enforcement  
23 came around to that discussion, didn't it?

24 A Say it again.

25 Q You remember talking to law enforcement, toward the end

1 of that conversation with law enforcement, that the --

2 MR. MARTINEZ: Your Honor, I don't have an  
3 objection, I would just ask for Mr. Gwaltney and the jury's  
4 benefit, it's so long since we heard what conversation we're  
5 talking about because we went through the long list of names.

6 THE COURT: All right. Let's restate the question  
7 beginning with the reference to the particular conversation.

8 Q (BY MR. O'TOOLE) Mr. Gwaltney, I'm going to ask you a  
9 question, if you can't remember, I'll be happy to show you a  
10 document.

11 A The names you just named is very close friends of mine's  
12 and it don't match up with Porky's situation, that's why I'm  
13 lost what you're trying to ask me.

14 Q (BY MR. O'TOOLE) Did you have a chance to have a  
15 conversation with the law enforcement that you had robbed  
16 Porky?

17 A Yes.

18 Q All right. And then you had a part of the conversation  
19 where Porky shot Geezy?

20 A Yes.

21 Q And then you said that Geezy had gotten tired of waiting  
22 around and went ahead and killed Porky?

23 A I never said that.

24 Q Is there a document that -- you do not remember saying  
25 that?

1 A I don't remember saying nothing like that.

2 Q Is there a document that I could show you that might  
3 refresh your memory?

4 A That I said Geezy shot Porky?

5 Q Shot and killed Porky.

6 A No, I don't remember saying that.

7 Q Is there a document I could show to help you --

8 MR. MARTINEZ: Asked and answered.

9 THE COURT: I don't -- we're not focused on the  
10 document. You can inquire further about the specific  
11 question. I'll allow you to ask him one more time. No  
12 reference to a document, ask him your core question.

13 Q (BY MR. O'TOOLE) All right. Do you recall,  
14 Mr. Gwaltney, do you recall telling the law enforcement people  
15 at the meeting that Geezy says that he got tired of waiting  
16 and go -- and goes out and kills Porky?

17 A I don't remember.

18 Q Don't remember that. Is there a document --

19 MR. MARTINEZ: Asked and answered.

20 Q (BY MR. O'TOOLE) -- something I could show you --

21 THE COURT: Hold on, let me --

22 Q (BY MR. O'TOOLE) Is there something I could show you to  
23 refresh your --

24 THE COURT: Let me see the lawyers at the bench.

25 (Bench conference on the record.)

1 THE COURT: Okay. So Mr. Martinez, don't do that.

2 MR. MARTINEZ: I'm sorry.

3 THE COURT: You know, I understand that you are  
4 trying your hardest here and that you feel that you are doing  
5 the public's business to the best of your ability. But  
6 Mr. O'Toole has a job to do, he's entitled to ask questions.  
7 If you've got an objection, raise the objection, but do it in  
8 a neutral kind of voice, don't evince that sort of anger.  
9 He's objecting on grounds of asked and answered. Mr. O'Toole,  
10 he's -- you've given him the opportunity to tell you whether  
11 or not the document would help to refresh his recollection.

12 MR. O'TOOLE: And he said yes, he said yes. Part of  
13 the problem is --

14 THE COURT: I didn't hear him say yes.

15 MR. O'TOOLE: He did at the very -- he said --

16 MR. MARTINEZ: I don't know if he ever answered.

17 MR. ENZINNA: I think what he said was "I don't  
18 remember exactly."

19 MR. O'TOOLE: I thought he did, but I want to ask  
20 the Court a quick favor.

21 THE COURT: You can ask him this question: With  
22 reference to the issue of whether or not you said Geezy killed  
23 Porky, would it refresh your recollection to look at a law  
24 enforcement report that purports to be about that?

25 MR. O'TOOLE: That's fine, I'd be happy to do that.

1 I want to ask the Court --

2 THE COURT: Keep it pretty close to that.

3 MR. O'TOOLE: I'll do that.

4 THE COURT: We'll see what his answer is to that.

5 MR. O'TOOLE: If the Court could do this for me, I'm  
6 having difficulty hearing the Court where I am and twice I  
7 overspoke you when I didn't mean to.

8 THE COURT: I'll get closer to my microphones. Is  
9 everybody --

10 MR. O'TOOLE: Just pull your chair up a little bit  
11 closer to the microphone.

12 THE COURT: Orthopedic issues make that difficult,  
13 Mr. O'Toole. Are you having difficulty hearing me? If  
14 everybody's having that problem, I'll get myself closer to the  
15 microphone. All right. Are you ready?

16 MR. MARTINEZ: Can I just sort of finish flushing  
17 out the concern here: When this issue came up originally the  
18 witness definitively said, no, I didn't say that. Mr. O'Toole  
19 is now bullying him into a corner where he's saying, oh, I  
20 might --

21 THE COURT: Bullying from your perspective,  
22 cross-examination, from ours. Let's go.

23 MR. MARTINEZ: There is an ERROR IN --

24 THE COURT: Let's go.

25 (The following proceedings were had in open court.)

1 Q (BY MR. O'TOOLE) Mr. Davis (sic), I asked you the  
2 question, do you remember talking to law enforcement on  
3 November 11th, 2015 and telling them that Geezy says he gets  
4 tired of waiting and goes ahead and kills Porky?

5 A You mean he as him hisself?

6 Q Do you remember saying that to law enforcement?

7 A I don't remember.

8 Q All right. Is there a law enforcement document that I  
9 could show you that might refresh your memory?

10 A I don't know.

11 Q Can I show it to you and ask you?

12 MR. MARTINEZ: Objection.

13 THE COURT: You may. You may show him the document.  
14 He said he doesn't know.

15 Q (BY MR. O'TOOLE) Read that sentence, look up when you're  
16 done.

17 A What, read the yellow print?

18 Q Right, the part that --

19 A Geezy say he gets tired --

20 THE COURT: Just read it to yourself.

21 Q (BY MR. O'TOOLE) Just read it to yourself and I'll ask  
22 you -- see if your memory is refreshed.

23 A Okay.

24 THE COURT: Hand the document back to Mr. O'Toole.  
25 Mr. O'Toole will return to the podium.

1 Q (BY MR. O'TOOLE) Thank you, sir. Mr. Davis (sic), is  
2 your memory on that issue refreshed?

3 A I still can't recall. I mean, I might have said, I might  
4 have not.

5 Q Okay. Thank you. I'm not going to inquire about that  
6 further.

7 Let me ask you a question: You told us that you saw  
8 Geezy how many times a week, two or three times a week?

9 A No, I didn't say that.

10 Q How many times a week did you see him?

11 A I seen him twice, about three times.

12 Q Total?

13 A Yes.

14 Q Oh, total. All right. But you saw -- you saw his  
15 brother Roscoe?

16 A Yeah, frequently.

17 Q All right. Where did Roscoe live?

18 A I don't know where he lived at.

19 Q Did you remember who his girlfriend was?

20 A No, I don't.

21 Q Did you ever see who his family was?

22 A No, I didn't.

23 Q What kind of car did he drive?

24 A No, I didn't.

25 Q How about Geezy, did you know where he lived?



1 A No, I didn't.

2 Q Did you ever go to his house?

3 A No, I didn't.

4 Q What kind of car did Mr. Johnson drive?

5 A Never seen him in a car.

6 Q Did you ever talk to him about anything at all?

7 A Porky.

8 Q Talked to him about Porky, so you talked to him about  
9 business, but you never got to know him at all?

10 A No, I haven't.

11 Q All right.

12 MR. O'TOOLE: Your Honor, I have no further  
13 questions. Thank you.

14 THE COURT: Mr. Bussard.

15 MR. BUSSARD: No questions. Thank you.

16 THE COURT: Mr. Francomano.

17 MR. FRANCOMANO: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FRANCOMANO:

20 Q Mr. Gwaltney, have you -- I said that right, didn't I,  
21 Gwaltney?

22 A Yes.

23 Q Mr. Gwaltney, have you ever heard of a BGF book?

24 A The black book?

25 Q The black book.

1 A Yeah.

2 Q Do you know what that is?

3 A It's a black book.

4 Q What's in the book?

5 A All different kind of things, educational things.

6 Q What do you mean by educational things?

7 A Different type of things. I haven't read it in a while,  
8 so I can't recite it to you.

9 Q If I showed you a copy of it, would you recognize it, if  
10 I showed it to you?

11 A Yes.

12 Q I don't want you to read anything. I just want you to  
13 look at it, just -- if you go through it, just look up, and  
14 let me know.

15 A Yeah.

16 Q Do you recognize that book?

17 A Yes.

18 Q What is that book?

19 A It's called a black book.

20 Q Okay. And in the black book, are there any pictures?

21 A No.

22 MR. FRANCOMANO: No further questions.

23 THE COURT: Redirect.

24 REDIRECT EXAMINATION

25 BY MR. MARTINEZ:

1 Q Mr. Gwaltney, I want to come back to some of the  
2 questions Mr. O'Toole was asking you about the long interview.

3 Do you remember when you went through all of the names?

4 A Yes.

5 Q And at the end you talked about -- there was some  
6 questions asked about information you provided regarding  
7 Porky; right?

8 A Right.

9 Q That document that he showed you, was that your statement  
10 or did someone else write it?

11 A Had to have been somebody else because I don't remember  
12 saying it.

13 Q And the book you just looked at --

14 A Yes.

15 Q -- it's correct; right, it doesn't contain pictures or  
16 lists of --

17 A Right.

18 Q -- who's in what regime; right?

19 A Right.

20 Q And if there was a book that contained those things,  
21 would that be a different book?

22 A It would be a different book, yeah.

23 MR. FRANCOMANO: Objection.

24 THE COURT: Overruled.

25 Q (BY MR. MARTINEZ) Would that be a different book?

1 A Yes, yes.

2 MR. MARTINEZ: That's it, Your Honor. No further  
3 questions.

4 THE COURT: May the witness be excused?

5 MR. O'TOOLE: Yes.

6 MR. FRANCOMANO: Yes, Your Honor.

7 THE COURT: You're excused.

8 Counsel, come on up. Approach.

9 (Bench conference on the record.)

10 THE COURT: I can't remember, did you tell me you  
11 have one more after this or that's the guy you let go?

12 MR. MARTINEZ: No, we did. The guy we let go -- we  
13 thought the Davis cross was going to take longer.

14 THE COURT: Right. So you don't have anymore  
15 witnesses for today, it's almost 5:00 o'clock anyway, and then  
16 we'll kick off tomorrow. That's your expectation,  
17 Mr. Martinez?

18 MR. MARTINEZ: Yes.

19 THE COURT: Okay.

20 (The following proceedings were had in open court.)

21 THE COURT: Ladies and gentlemen, we've reached the  
22 end of our trial day. During this overnight recess do not  
23 discuss the case with anyone. Do not discuss it with your  
24 fellow jurors. Do not discuss it with your friends or family.  
25 Once again, if anyone asks you what's going on with your jury

1 service, here's what you're allowed to tell them: That you're  
2 serving on a jury in federal court in a criminal case, that  
3 the trial is expected to last until the third week of January,  
4 that you've been instructed by the judge that you're not  
5 allowed to talk to them or anyone about the case.

6 Do not allow yourselves to be exposed to any news  
7 articles or reports that touch upon the case or the issues it  
8 presents or the participants in the trial. Avoid all contact  
9 of any kind with any of the participants in the trial. Do not  
10 make my independent investigation of the law or the facts  
11 relevant to the case. Do not conduct internet searches with  
12 respect to the issues presented or the persons participating  
13 in the trial. Do not consult external sources, such as  
14 encyclopedias or dictionaries in reference to the issues and  
15 terms that have been presented to you here.

16 We will plan to start at 9:30 tomorrow morning. You  
17 are excused until then. Please take the jury out.

18 (Jury left the courtroom.)

19 THE COURT: Anything outside the hearing of the  
20 jury?

21 MR. MARTINEZ: Not from us, Your Honor.

22 THE COURT: Defense counsel?

23 MR. O'TOOLE: No, Your Honor.

24 MR. MARTINEZ: Actually, I spoke too soon.

25 MS. HOFFMAN: I do have one correction to make.

1 Apparently, I referred to this exhibit as PHI 30 and it should  
2 have been referred to as PHI 29, which is how it was  
3 originally admitted into evidence.

4 THE COURT: All right. So Ms. Powell, do you show  
5 PH30 to have been received in evidence?

6 THE CLERK: I did not mark it in. I --

7 THE COURT: You assumed that she had made a mistake?

8 THE CLERK: Yes.

9 THE COURT: So for the record, PHI 30 is not in  
10 evidence; correct?

11 THE CLERK: Correct.

12 THE COURT: And PHI 29 is in evidence; correct,  
13 Ms. Powell?

14 THE CLERK: Yes.

15 THE COURT: Does anyone differ with that rendition  
16 of the record? Hearing none, that will be the state of  
17 things. When we conclude at the end of this week, perhaps  
18 sometime on Thursday, I do direct all of you to meet with  
19 Ms. Powell at sort of a -- for a midpoint check up on the  
20 state of trial exhibits and to ascertain that all of the  
21 records being maintained by respective counsel and the Court  
22 are in perfect agreement with each other. I have no doubt  
23 about the status of the Court's record. I'm sure that it is  
24 perfect. But nonetheless, we will check it against the  
25 records being maintained by counsel and identify any issues.

1           So I'll ask the government to assist me in  
2     remembering that this is a task that needs to be accomplished  
3     before the close of business Thursday, a complete review of  
4     the status of exhibits to make sure that everyone's records  
5     indicate the same thing at roughly the midpoint of the trial.

6           All right. I don't think there's anything else to  
7     be addressed. The defendants are remanded to the custody of  
8     the Marshal. Counsel are excused. We will reconvene tomorrow  
9     morning at 9:30.

10           (The proceedings were concluded.)

11           I, Christine Asif, RPR, FCRR, do hereby certify that  
12     the foregoing is a correct transcript from the stenographic  
13     record of proceedings in the above-entitled matter.

14                               \_\_\_\_\_/s/\_\_\_\_\_  
15                               Christine T. Asif  
16                               Official Court Reporter  
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